

COPY

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

----- x VOLUME I  
WILLIAM R. GAFFEY, :  
 :  
 :  
 : Plaintiff :  
 :  
 :  
 : vs. : Cause No. 91-1938-C  
 : (CAS)  
 :  
 :  
 : PETER MONTAGUE, et al., :  
 :  
 :  
 : Defendants :  
 :  
 : Thurs. October 20, 1994  
----- x Washington, D.C.

Deposition of:

PETER GUNN MONTAGUE

a witness of lawful age, called on behalf of the Plaintiff  
in the above-entitled action, pending before the United  
States District Court of the Western District of Missouri,  
Eastern Division, before Margaret Sue Foster, Notary Public  
in and for the District of Columbia, taken at the offices of  
Debevoise & Plimpton, 555 Thirteenth Street, Northwest,  
Washington, D.C., beginning at 10:02 o'clock a.m.

APPEARANCES:On behalf of the Plaintiff:

CORDELL P. SCHULTEN, ESQ.  
Lewis, Rice & Fingersh  
8182 Maryland Avenue  
Suite 400  
Clayton, Missouri 63105-3786  
(314) 444-7600

On behalf of the Defendant Environmental Research  
Foundation:

EDWARD M. ROTH, ESQ.  
Leritz, Plunkert & Bruning  
One City Centre  
Suite 2001  
St. Louis, Missouri 63101  
(314) 231-9600

On behalf of the Defendant Peter Montague:

GERSON SMOGER, ESQ.  
3175 Monterey Boulevard  
Oakland, California 94602

\* \* \*

I N D E X

Examination by:

|                     |                     |                   |                 |
|---------------------|---------------------|-------------------|-----------------|
| <u>Witness</u>      | <u>Mr. Schulten</u> | <u>Mr. Smoger</u> | <u>Mr. Roth</u> |
| PETER GUNN MONTAGUE | 4                   | --                | --              |

E X H I B I T S

|                                             |             |
|---------------------------------------------|-------------|
| <u>Plaintiff's Exhibit Numbers</u>          | <u>Page</u> |
| No. 1, C.V.                                 | 25          |
| No. 2, Written Work of Peter Montague       | 58          |
| No. 3, #171 "RACHEL's Hazardous Waste News" | 122         |
| No. 4, Jenkins memo                         | 131         |

\* \* \*

1                                   P R O C E E D I N G S

2   Whereupon,

3                                   PETER GUNN MONTAGUE

4   was called as a witness, and after having been duly sworn by  
5   the notary public, was examined by counsel and testified as  
6   follows:

7                                   EXAMINATION BY COUNSEL FOR THE PLAINTIFF

8                   MR. ROTH:   Before we begin the deposition, Cordell,  
9   I see it's a few minutes after 10:00 o'clock.   For health  
10   reasons we will need to break about every hour, hour and a  
11   half for a short break.

12                   MR. SCHULTEN:   That's perfectly all right with me.  
13   That would probably be about the time I would be breaking  
14   too.

15                   MR. ROTH:   All right.

16                   MR. SCHULTEN:   And if we need to take other breaks  
17   at any time, it's not a problem at all.   And you can tell me  
18   when you'd like to break for lunch, and I'll try to be as  
19   accommodating as I can.

20                   Okay.   Are we ready?

21                   MR. ROTH:   Yes.

22                   MR. SCHULTEN:   Mr. Montague, my name is Cordell

1 | Schulten. I'm one of the attorneys for the plaintiff in this  
2 | lawsuit, William Gaffey. I'm going to be asking you some  
3 | questions today. If at any time you don't understand one of  
4 | the questions that I've asked, please feel at liberty to ask  
5 | me to explain or to restate my question. I want to make sure  
6 | that you understand the questions that I ask so that I can be  
7 | confident in the answers that you give me, that they're the  
8 | answers that you intend to give.

9 | BY MR. SCHULTEN:

10 | Q Is that fair enough?

11 | MR. SMOGER: Do you understand what he's saying?

12 | THE WITNESS: Yes.

13 | BY MR. SCHULTEN:

14 | Q Mr. Montague, have you ever had your deposition  
15 | taken before?

16 | A No.

17 | Q This is the first time you've ever had your  
18 | deposition taken in a lawsuit?

19 | A Correct.

20 | Q Could you please state your full name?

21 | A Peter Gunn Montague.

22 | Q And Mr. Montague, have you ever been known by any

1 other name than Peter Montague?

2 A I don't understand the question.

3 Q Have you ever authored an article or has anyone  
4 ever understood you to be called by, or have you ever  
5 referred to yourself by any other name than Peter Gunn  
6 Montague?

7 A Yes.

8 Q And what would that name have been?

9 A I'd like to talk to you.

10 (Discussion off the record.)

11 BY MR. SCHULTEN:

12 Q Do you need me to repeat the question, or are you  
13 prepared to answer?

14 A I've forgotten the question.

15 Q Were you ever known by or are you currently known  
16 by any other name than Peter Gunn Montague?

17 A Well, I've—

18 MR. SMOGER: Well, that's a different question,  
19 but—

20 MR. SCHULTEN: Okay.

21 MR. SMOGER: I want to cut through this. You asked  
22 him for past. When he was young in high school he wrote some

1 things under pen names for fun, and he can't remember them  
2 all. So that's what we're talking about.

3 BY MR. SCHULTEN:

4 Q Is that the substance of your testimony, that while  
5 you were in high school, you had some pen names?

6 A Correct.

7 Q But during your college and post-college years and  
8 your professional career, all the articles that you've ever  
9 authored, all the appearances that you've ever made, you've  
10 always been known as Peter Gunn Montague. Is that correct?

11 MR. SMOGER: Objection. Compound.

12 THE WITNESS: You've asked a couple questions.

13 BY MR. SCHULTEN:

14 Q Sure. I can break it down. In your college years  
15 did you ever author any article or were you ever known by any  
16 name other than your name Peter Gunn Montague?

17 MR. SMOGER: Objection. Compound.

18 THE WITNESS: I really don't remember all of the  
19 articles that I wrote during my college years. I wrote a  
20 lot.

21 BY MR. SCHULTEN:

22 Q Do you recall pen names that you may have used

1 authoring articles during your time in college?

2 A No.

3 Q Okay. Do you recall any other name that you've  
4 ever used from college forward, either in the authoring of  
5 articles— well, in the authoring of articles? Let's just  
6 leave it at that.

7 MR. SMOGER: Is that including college or after  
8 college?

9 MR. SCHULTEN: Well, he said he can't remember.

10 MR. SMOGER: Yes. So he's starting after you  
11 graduated college.

12 MR. SCHULTEN: Right.

13 THE WITNESS: Other than what? Your question was  
14 other than. Other than what?

15 BY MR. SCHULTEN:

16 Q Than your name Peter Gunn Montague.

17 A Yes. I've used Peter Montague.

18 Q Okay. That's the only other?

19 A Correct.

20 Q What is your current age?

21 A Fifty-five.

22 Q And your current address, please.

1 A 423— You want my home address?

2 Q Yes, please.

3 MR. SMOGER: Give him the ERF address, just your  
4 ERF address.

5 THE WITNESS: It's 105 Eastern Avenue, Suite 101,  
6 Annapolis, Maryland.

7 BY MR. SCHULTEN:

8 Q And that is the office address for Environmental  
9 Research Foundation. Is that correct?

10 A It is.

11 Q And how long has Environmental Research Foundation  
12 been at that address?

13 A Since, I think since January 1993.

14 Q Since January 1993?

15 A I believe so. I may be wrong about that. I may be  
16 misremembering when we moved, but approximately 1993.

17 MR. SMOGER: Just break for one second.

18 (Discussion off the record.)

19 MR. ROTH: We've just been discussing off the  
20 record the fact that the witness today, Peter Gunn Montague,  
21 is appearing in response to the deposition notice seeking his  
22 deposition, and is also appearing as the designee of the

1 Environmental Research Foundation. If it's agreeable to you,  
2 Cordell, if we could combine the deposition so that he'll be  
3 speaking in both capacities, and individual counsel for each  
4 of the defendants will have an opportunity to object and do  
5 all the things as though he's appearing in both capacities,  
6 rather than, as you noticed the deposition, taking his  
7 individual deposition now and the ERF deposition at 3:00  
8 o'clock. Is that acceptable to you?

9 MR. SCHULTEN: That is acceptable to me. My only  
10 concern is that if there's any testimony that you would like  
11 to have limited just to Mr. Montague testifying in his  
12 capacity as the representative of ERF, that you would so make  
13 that stipulation in response to either prior to him  
14 responding to the question, or if there's any concern along  
15 those lines.

16 MR. ROTH: That's fair enough.

17 MR. SCHULTEN: That we can just make sure that we  
18 understand that what responses are given in his individual  
19 capacity, if there comes a question that you would want to  
20 have limited just to his capacity as the corporate designee  
21 of ERF, that that could be done.

22 MR. ROTH: I understand. I think the record will

1 pretty much speak for itself, depending on what the nature of  
2 the inquiry is. Matters that are personal to Peter Montague  
3 I think will be evident by the questions that you ask. But  
4 if I think that there's a close call, I'll try to have it be  
5 reflected on the record. Okay?

6 MR. SCHULTEN: That's fine.

7 BY MR. SCHULTEN:

8 Q Mr. Montague, I was asking how long ERF had been at  
9 the Annapolis, Maryland address, and I believe you previously  
10 testified it was since January of 1993.

11 Prior to January 1993 where was the Environmental  
12 Research Foundation located?

13 A Prior to 1993 it was located in Washington, D.C.  
14 and in Princeton, New Jersey.

15 Q For how long a time was the Foundation located in  
16 Washington, D.C.?

17 A Approximately two years.

18 Q So that would have been calendar years 1991 and  
19 1992? Would that be correct?

20 A Approximately, yes.

21 Q Approximately. And then approximately prior to  
22 calendar year 1991 ERF was located in Princeton, New Jersey.

1 Is that correct?

2 A Correct.

3 Q And when was ERF originally formed?

4 A In, I believe, 1980.

5 Q 1980?

6 A I believe so.

7 Q Was it located at Princeton, New Jersey when it was  
8 initially formed in 1980?

9 A For a short time it was in Lawrenceville, New  
10 Jersey. And then we moved to Princeton.

11 Q Have there been any other locations of the  
12 Foundation other than those that you have described for me?

13 A No.

14 Q Mr. Montague, what is your social security number?

15 A 049-30-4348.

16 Q And are you married?

17 A Yes.

18 Q And do you have any children?

19 A Yes.

20 Q And how many children do you have?

21 A Three children.

22 Q And what are their ages?

1 MR. ROTH: Let me object. I just want a cautionary  
2 objection here, Cordell. I don't really think this has  
3 anything to do or is even reasonably calculated to have  
4 anything to do with this lawsuit. So subject to that  
5 objection.

6 MR. SMOGER: You can answer that one.

7 THE WITNESS: Thirty-one, 29, 27.

8 BY MR. SCHULTEN:

9 Q Is either your wife or any of your children  
10 involved with your work in any capacity at the Environmental  
11 Research Foundation?

12 A Yes.

13 Q Who is involved with your work at the Foundation?

14 A My wife.

15 Q And what are her responsibilities?

16 A She has many responsibilities.

17 Q Could you just briefly summarize those for me?

18 A She is our financial director, she's in charge of  
19 maintaining the financial well-being of our organization.  
20 She's the associate editor of "RACHEL's Environmental and  
21 Health Weekly." She's responsible for supervising staff  
22 members of the organization. I believe that's a fair summary

1 of her responsibilities.

2 Q What is your wife's name, Mr. Montague?

3 A Maria Pellerano.

4 Q And one of the items that you indicated that is  
5 within her responsibilities is supervising the staff members  
6 at the Foundation. How many staff members does the  
7 Foundation currently have?

8 A Three full-time staff.

9 Q And what are their names?

10 A Peter Montague, Maria Pellerano, Andrea  
11 Fearneyhough.

12 Q I'm sorry. The third one: Andrea Fearneyhough?

13 A Fearneyhough.

14 Q And what are Ms. Fearneyhough's duties at the  
15 Foundation?

16 A She's a research assistant.

17 Q Was Ms. Fearneyhough working for the Foundation in  
18 the period of time January through March of 1990?

19 A She was not.

20 Q When did she start at the Foundation?

21 A Sometime when we were in Washington, D.C., but I  
22 don't remember the date.

1 Q So it would have been after 1991 that Ms. .  
2 Fearneyhough began?

3 A Could have been during 1991. Probably was during  
4 1991.

5 Q Getting back to the time period January through  
6 March of 1990, did the Foundation have any other staff  
7 members besides yourself and your wife?

8 A Would you read the question back?

9 (Question was read.)

10 MR. SMOGER: I'm going to object—

11 BY MR. SCHULTEN:

12 Q You can answer if you understand the question.  
13 Would you like me to repeat or rephrase the question?

14 A Yes, please.

15 Q Who were the staff members of the Foundation during  
16 the time period January 1990 through March of 1990?

17 A I believe that a woman named Abigail Allen was the  
18 only paid staff member of the organization at that time.

19 Q What were Ms. Allen's duties?

20 A She received and opened the mail, and decided what  
21 should be done, and she answered the telephone and took  
22 messages.

1 Q Did she perform any research duties?

2 A No.

3 Q Who performed the research duties at the Foundation  
4 during the period of time January 1990 through March of 1990?

5 MR. ROTH: Object to the form and lack of  
6 foundation. Subject to that, if you can understand the  
7 question, you can answer it.

8 THE WITNESS: I performed the research for the  
9 organization during that period.

10 BY MR. SCHULTEN:

11 Q Mr. Montague, let's get back to your current  
12 employment. What is your position with the Environmental  
13 Research Foundation?

14 A My title is director.

15 Q And what are your duties as director of ERF?

16 A I'm responsible for all aspects of the  
17 organization's operation.

18 Q What are the aspects of the operation of ERF?

19 MR. ROTH: Are you asking what ERF does?

20 BY MR. SCHULTEN:

21 Q Right. He said "aspects of the operation." So I'm  
22 asking him: what are the aspects of the operation?

1 MR. ROTH: Okay.

2 THE WITNESS: We answer questions from the public.  
3 We publish "RACHEL's Environmental and Health Weekly." We  
4 occasionally conduct workshops to which people are invited.  
5 Of course we do things like pay bills and use the telephone.

6 BY MR. SCHULTEN:

7 Q What is the subject matter of the research that is  
8 conducted at the Environmental Research Foundation, what  
9 types of subjects?

10 A Technologies and materials that impact  
11 environmental health and human health.

12 Q How long have you been the director of ERF, Mr.  
13 Montague?

14 A Since sometime in 1983.

15 Q Did you have a position with the Environmental  
16 Research Foundation prior to 1983 other than director?

17 A Yes. My title was research director.

18 Q Was someone else, did someone else have the title  
19 and responsibility of director of the Foundation?

20 A Yes.

21 Q Who was that?

22 A My former wife.

1 Q And what was her name or what is her name?

2 A Katherine Montague.

3 Q Does Katherine Montague have any association with  
4 the Environmental Research Foundation currently?

5 A She is a member of our board of directors.

6 Q Who are the other members of the board of directors  
7 of the Foundation currently?

8 A We are in the process of mailing letters to the  
9 board members telling them that their term has terminated.  
10 Now, I don't know whether those letters have actually gone  
11 into the mail. They've been written, they've been signed.  
12 So I don't exactly know how to answer your question.

13 MR. ROTH: Just for the record, the Environmental  
14 Research Foundation has produced to you tax returns that have  
15 a schedule attached to them for each of the relevant years,  
16 including the composition of the board of directors. So, you  
17 may want to refer to that, and that may refresh the witness'  
18 recollection as to particular periods of time and so forth.

19 BY MR. SCHULTEN:

20 Q Thank you. Let me just ask the question and maybe  
21 this will make it more efficient. Let me ask the question  
22 this way. Tell me whether or not prior to sending out the

1 letters that you've just referred to, Mr. Montague, prior to  
2 sending out those letters whether or not the following people  
3 that I will name for you were or are members of the board of  
4 directors: Debbie Keller?

5 A Yes.

6 Q Karen Stultz?

7 A Yes.

8 Q Gel Stevenson?

9 A Yes.

10 Q Katherine Montague?

11 A Yes.

12 Q Ed Begley, Jr.?

13 A Yes.

14 Q Sue Greer?

15 A Yes.

16 Q James Sackor?

17 A Yes.

18 Q Tom Webster?

19 A Yes.

20 Q Can you think of anyone else?

21 A No.

22 Q Are there any other new members of the board of

1 | directors that are going to be added to the board that would  
2 | be different from the names that I've just read to you?

3 |       A     It's entirely conceivable that in the future we  
4 | might—

5 |       Q     Oh, I mean that you know of right now.

6 |           MR. SMOGER:  If someone's already agreed and the  
7 | arrangements were made and they're on the board, you can  
8 | answer that.  Otherwise, it's speculation.

9 |           MR. SCHULTEN:  Right.

10 |          THE WITNESS:  The answer is no.

11 |          BY MR. SCHULTEN:

12 |       Q     Fine.  Mr. Montague, do you have any other  
13 | employment positions currently besides your position as  
14 | director of the Environmental Research Foundation?

15 |       A     No.

16 |       Q     Do you perform any consulting work on an individual  
17 | basis outside the scope of your employment as the director of  
18 | Environmental Research Foundation?

19 |           THE WITNESS:  The question is pretty vague.

20 |           MR. SMOGER:  Ask him to repeat it if you don't  
21 | understand it.

22 |           THE WITNESS:  Repeating it won't help.

1 MR. ROTH: If you don't understand the question--

2 THE WITNESS: I don't understand the question.

3 MR. SMOGER: When I say repeat it, he's got to  
4 rephrase it the way you understand it.

5 BY MR. SCHULTEN:

6 Q I'll rephrase it. What I'm asking, Mr. Montague,  
7 is: outside of your duties that you've already described for  
8 me as director of the Environmental Research Foundation, do  
9 you get paid for doing other types of work, such as, for  
10 example, consulting on a project-by-project basis? Someone  
11 calls you up and says, I'd like you to consult on a specific  
12 project and that would be outside of your duties as director  
13 of the Environmental Research Foundation.

14 (Mr. Smoger confers with the witness.)

15 THE WITNESS: No.

16 MR. SMOGER: And you're talking about right now.  
17 Obviously, previously, you know, if we're going back into the  
18 eighties, he worked for Princeton.

19 MR. SCHULTEN: Right. I'm going to get to that.

20 MR. SMOGER: You're talking about right now.

21 MR. SCHULTEN: I'm just talking about currently.

22 MR. SMOGER: He's had other employment, and you're

1 aware of that.

2 MR. SCHULTEN: Right. I have that. I'm talking  
3 about concurrently at this present time does he have any  
4 other employment position? Does he derive income from any  
5 other—

6 MR. SMOGER: You mean does he— Are you saying does  
7 anybody not pay ERF for anything, if any moneys come in, it  
8 goes through ERF. That's what you're asking? His sole  
9 employer is ERF.

10 MR. SCHULTEN: Correct. Is his sole employer right  
11 now—

12 MR. SMOGER: His sole income-deriving employer is  
13 ERF.

14 BY MR. SCHULTEN:

15 Q Is that correct, Mr. Montague?

16 A That is correct.

17 Q Are you currently engaged as a consultant  
18 voluntarily, gratuitously providing your services as a  
19 consultant for any other organization or individual besides  
20 ERF?

21 MR. SMOGER: Objection. Overbroad and vague.  
22 Incomprehensible.

1 BY MR. SCHULTEN:

2 Q Let me withdraw that question and let me ask it  
3 more specifically. Are you currently engaged as an expert  
4 witness in any litigation?

5 A No.

6 Q Have you been retained by any individual or  
7 organization to provide consulting work with respect to  
8 pending litigation?

9 (Witness confers with Mr. Smoger.)

10 MR. SMOGER: We're assuming that what you mean is  
11 retainer. Here's the question. Obviously people call ERF.

12 MR. SCHULTEN: Mm-hm.

13 MR. SMOGER: He wouldn't have a clue as to whether  
14 they're in litigation or not. Are you saying—

15 MR. SCHULTEN: I'm talking about ongoing  
16 relationships.

17 MR. SMOGER: Does somebody have an ongoing retainer  
18 where they pay him some monthly or weekly relationship, or  
19 they pay him some amount to assist in litigation. Is that  
20 what your question is?

21 MR. SCHULTEN: That's one question.

22 BY MR. SCHULTEN:

1 Q What's the answer to that question? Do you have  
2 any ongoing relationship where you are providing consulting  
3 work with respect to litigation?

4 A Not that I know of.

5 Q Okay. And then the other question then is—

6 A As my lawyer told you, if someone calls me, I don't  
7 know what they're engaged in at the other end of the phone.  
8 They may be engaged in litigation.

9 Q Oh, I understand that. That's fine. No. I'm  
10 asking what you're personally aware of, if someone has called  
11 you up and says, we'd like you to assist us, to help us,  
12 consult with us, we've got a lawsuit going on out here in  
13 California; here are the facts of the lawsuit; here's what  
14 happened; can you give us your— can you provide us consulting  
15 services? Any relationship like that right now?

16 A No.

17 Q Do you have any current position with the  
18 Greenpeace organization?

19 A No.

20 Q So let me make sure I understand. You don't have  
21 any other employment position currently outside of your  
22 employment with Environmental Research Foundation. Is that

1 correct?

2 A Correct.

3 MR. SCHULTEN: All right now. Let's go back, and  
4 maybe for the sake of efficiency, let's mark your curriculum  
5 vitae that was produced to us in discovery. This was  
6 produced, I think, about a year ago. Let's mark this as  
7 Montague Deposition Exhibit No. 1.

8 (Exhibit No. 1 [Montague] was  
9 marked for identification.)

10 BY MR. SCHULTEN:

11 Q The court reporter has handed to you what we have  
12 now marked as Montague Deposition Exhibit No. 1. Mr.  
13 Montague, is that an accurate copy of your current curriculum  
14 vitae?

15 A No.

16 Q What is inaccurate about it?

17 A There are omissions?

18 Q What is the first omission?

19 A I'm a member of the American Chemical Society.

20 Q That should be added to the list of memberships on  
21 page 3 of the document?

22 A Yes.

1 Q And when did you become a member of that Society?

2 A Recently.

3 Q Within the last six months?

4 A Yes.

5 Q Okay. Any other additions to memberships on page

6 3?

7 A I'm a member of the National Writers Union.

8 Q When did you become a member of that Union?

9 A Recently.

10 Q Are there any other omissions?

11 A Not that I'm aware of at the present moment. Not  
12 that come to my attention at the moment, no.

13 Q Is the information that's stated on the C.V.,  
14 Deposition Exhibit No. 1, is the information correct to this  
15 date, or do we need to make any changes to what is stated  
16 here?

17 A I no longer edit the publication "RACHEL's  
18 Hazardous Waste News." I now edit the publication "RACHEL's  
19 Environment and Health Weekly."

20 Q Is that a separate and distinct publication from  
21 "RACHEL's Hazardous Waste News"? Let me ask the question  
22 this way. I withdraw that.

1                   Is "RACHEL's Hazardous Waste News" still published?

2           A       No.

3           Q       So has the new publication — I'm sorry —

4   Environment—

5           A       —and Health Weekly.

6           Q       Has that replaced the "Hazardous Waste News"?

7           A       Yes.

8           Q       And RACHEL is an acronym for Remote Access Chemical  
9   Hazards Electronic Library. Is that correct?

10          A       Correct.

11          Q       What is different about the new newsletter that you  
12   edit when compared to "RACHEL's Hazardous Waste News"? Does  
13   it address more topics than what the previous newsletter had  
14   addressed? Or why— Let me just ask this question. I'll  
15   withdraw that and ask this question. Why did you change the  
16   name?

17          A       I wanted to.

18          Q       You wanted to change the name. Is that correct?

19          A       That's why I changed it, because I wanted to.

20          Q       Let me go back and ask the other question then.

21   Does it address more topics than the previous newsletter had  
22   addressed or subject areas?

1           A     I don't think so.

2           Q     So was there any other reason for changing the name  
3 other than just your personal decision that you wanted to  
4 change the name?

5           A     No.

6           Q     Okay. Is there anything else about Deposition  
7 Exhibit No. 1 that needs to be corrected or updated?

8           A     Not that comes to my attention at the moment, no.

9           Q     Okay. Take a look at page 2 under the heading, a  
10 little bit more than half way down the page, under the  
11 heading "concurrently." It says, January 1971 to present:  
12 founding member, board of directors, Southwest Research and  
13 Information Center.

14                   Are you still a member of the board of directors of  
15 the Southwest Research and Information Center in Albuquerque,  
16 New Mexico?

17           A     Yes.

18           Q     Are you on the board of directors of any other  
19 organization that is not listed here on your C.V.?

20           A     Again because of timing I don't know. I don't know  
21 the answer to that question as of this moment.

22           Q     And with respect to which organization would you

1 have that question?

2 A It's an organization in Chesapeake, Virginia named  
3 The Environmental Health Network, and I have been on their  
4 board, but I think I'm about to be excused from their board.

5 Q How long were you on the board of directors of  
6 Environmental Health Network? When did you become a member  
7 of the board? I'll ask the question that way.

8 A I really don't recollect. I really don't know.  
9 Three or four years.

10 Q And I'm sorry. You said that was in Chesapeake,  
11 New Jersey?

12 A In Virginia.

13 Q Virginia. I'm sorry. Let's look back now at your  
14 C.V., Deposition Exhibit No. 1. Could you tell me a little  
15 bit more about what your position as senior research analyst  
16 in the toxics campaign for Greenpeace, U.S.A. involved? What  
17 did you do in that position?

18 A Answered questions for people who would call me  
19 with questions and wrote reports.

20 Q Was that an employment position with Greenpeace,  
21 U.S.A.? Were you compensated for that, the work you  
22 performed for them?

1 A I was compensated.

2 Q And that position as senior research analyst for  
3 Greenpeace concluded in January 1992. Is that correct?

4 A Correct.

5 Q And why did you conclude your position with  
6 Greenpeace? Why did you leave that position?

7 A There were many reasons.

8 Q What was the first reason?

9 MR. ROTH: Object as to form. Do you mean first in  
10 time, or primary, or I don't know what "first" means.

11 MR. SCHULTEN: He said there are many reasons.

12 BY MR. SCHULTEN:

13 Q What was the first of the many, or one of the many?  
14 Maybe I'll ask it that way. What was one of the many  
15 reasons?

16 A They were terminating the position that I was in,  
17 and they wanted me to move to another position which I did  
18 not want to do. They wanted me to do other work, and I did  
19 not want to do that other work.

20 Q What was the other position that Greenpeace wanted  
21 you to move to?

22 A There were various jobs that they wanted to move me

1 into.

2 Q Such as what?

3 A Too vague for me to really spell it out, since I  
4 never got into the job. They were just jobs with different  
5 names, different titles. But they were not the job that I  
6 had, and the only job I wanted with Greenpeace was the job  
7 that I had.

8 Q And what was the toxics campaign that you were the  
9 senior research analyst for?

10 A It was a unit of Greenpeace.

11 Q And what was the purpose of that unit?

12 A To diminish the use of toxic materials worldwide.

13 Q Was the position which Greenpeace wanted you to  
14 move to something different than within the toxics campaign?

15 A I don't know. I don't know what unit I would have  
16 been in in other jobs.

17 Q Let me ask this question. Have you ever served as  
18 either an expert witness or a consultant to litigation, and  
19 specifically toxic tort litigation?

20 MR. ROTH: By that do you mean the same situation  
21 where somebody would call him up and say we want to retain  
22 you in some fashion to advise us on an ongoing basis with

1 respect to a particular litigation?

2 MR. SCHULTEN: Yes. I'm talking about a particular  
3 engagement for a particular piece of litigation that you were  
4 informed about.

5 BY MR. SCHULTEN:

6 Q Have you ever served as an expert witness or if not  
7 as an expert witness, as a consultant for a specific—

8 MR. ROTH: Toxic tort?

9 MR. SCHULTEN: Toxic tort litigation.

10 MR. SMOGER: I want to talk to him because to the  
11 extent it's consulting, it might be privileged.

12 MR. SCHULTEN: The content of it would be, but not  
13 his, whether or not he in fact—

14 MR. SMOGER: No. Even the fact of consulting at  
15 all, because that's an identification of a person, and you  
16 can't find if somebody's consulting for given litigation. I  
17 doubt it's true in this sense, but even the fact of  
18 consulting is privileged.

19 (Witness confers with Mr. Smoger.)

20 THE WITNESS: No. I've never participated in a  
21 toxic tort as a paid consultant.

22 BY MR. SCHULTEN:

1           Q     Have you ever participated in a toxic tort  
2 litigation as an unpaid consultant?

3           A     I don't know.

4           Q     I'm not asking about those times where people may  
5 have called you up and asked you a question and you didn't  
6 know the purpose of their question. I'm asking you for  
7 situations where —

8           A     I've never knowingly done it. I don't recall ever  
9 knowingly having done it. My best recollection is no.

10          Q     Mr. Montague, then moving to your position from  
11 March of 1985 to December of 1990 as the manager of  
12 distributed computing, senior professional technical staff,  
13 to office of computing and information technology at  
14 Princeton University, is the description that is given on  
15 your C.V. an accurate description of your duties in that  
16 position?

17          A     Maintaining the RACHEL data base was not one of my  
18 duties in that position. I did it, but it was not one of my  
19 duties.

20          Q     Was that in conjunction with your service, your  
21 employment with the foundation?

22          A     I wasn't employed by the Foundation at that time.

1 Q You were not?

2 A Correct.

3 Q I thought that you were employed by the Foundation  
4 from July 1983—

5 A I was not compensated.

6 Q Okay. When were you first compensated for your  
7 work for the Environmental Research Foundation?

8 A I don't know. Late 1990, early 1991. I'm really  
9 not sure.

10 Q So prior to late 1990 or early 1991 your service  
11 for the Environmental Research Foundation was purely  
12 gratuitous. You did not receive any compensation whatsoever  
13 for that?

14 A There might have been a time or two when I would  
15 get a couple of thousand dollars for a year's work. But  
16 generally speaking, it was not compensated until quite late.

17 Q So was your principal source of income then during  
18 the period of time from March 1985 through December 1990 your  
19 job at Princeton University?

20 A Yes.

21 Q How about when you were senior research analyst for  
22 Greenpeace from January '91 to January '92? Was your

1 position at Greenpeace the principal source of your income?

2 A I was paid by Environmental Research Foundation and  
3 by Greenpeace, and I don't remember which was the principal  
4 source of income.

5 Q Do you have any recollection as to approximate  
6 percentages? Foundation 75 percent, Greenpeace 25 percent of  
7 your income during that period of time?

8 MR. SMOGER: Don't guess.

9 MR. ROTH: Objection as to form.

10 MR. SMOGER: Don't guess. If you know, just state  
11 what you know.

12 THE WITNESS: I don't remember.

13 BY MR. SCHULTEN:

14 Q But you were compensated by both organizations?

15 A Correct.

16 Q Why did you leave your position at Princeton  
17 University in December 1990?

18 A To take another job.

19 Q And that's the job with Greenpeace?

20 A And with Environmental Research Foundation.

21 Q Okay. Prior to your position as manager of  
22 distributed computing, you were from December 1983 through

1 March 1985 the administrator of the microcomputer development  
2 lab at Princeton University. Is that correct?

3 A Correct.

4 Q And generally what were your duties in that  
5 position?

6 A To help faculty members at the University  
7 understand, acquire and use microcomputers.

8 Q And during that same period of time you developed  
9 the RACHEL data base. Is that correct?

10 A I believe that's correct.

11 Q What sources of information did you utilize to  
12 create the RACHEL on-line data base?

13 MR. ROTH: Are you talking about technical computer  
14 stuff to actually establish a network, or are you talking  
15 about the substantive materials for which the data base was  
16 used as a repository?

17 BY MR. SCHULTEN:

18 Q I appreciate that. No. The latter is what I'm  
19 concerned with, not the technical. I'm not interested in the  
20 technical aspects of the data base. What I'm interested in  
21 is what substantive sources of information were you drawing  
22 upon to create this electronic data base?

1 MR. ROTH: Object to the form. I'm still not  
2 clear. I don't know. Maybe it's clear to the witness. Are  
3 you talking about what data was actually put into the data  
4 base?

5 MR. SCHULTEN: Yes. That's fine. That's what I  
6 intended.

7 MR. ROTH: And what period of time are you talking  
8 about?

9 MR. SCHULTEN: We're talking about the time period  
10 December 1983 through March 1985 which I believe, according  
11 to the C.V., during that period of time is when it was  
12 created.

13 MR. ROTH: Do you know what was in the data base in  
14 1983 to 1985?

15 THE WITNESS: I know some of what was in it.

16 BY MR. SCHULTEN:

17 Q What were some of the things that were in it?

18 A Abstracts of articles that had appeared in "The New  
19 York Times" relating to the broad subject of environment.

20 Q Okay. How about professional articles from  
21 professional journals?

22 A No. Those are— Well, there might have been— There

1 was no copyrighted material, which articles in professional  
2 journals are generally copyrighted, so we would not have  
3 them. We would not have access to them.

4 Q Any other media sources other than "The New York  
5 Times"?

6 A For a period we were abstracting the Newark, New  
7 Jersey "Star Ledger."

8 Q Any others that you can recall right now?

9 A Occasionally we might write an abstract from  
10 "Chemical and Engineering News." Possibly from  
11 "Environmental Science and Technology." Very few, though.  
12 The bulk of the material came from abstracts that we wrote of  
13 articles that had appeared in "The New York Times."

14 Q Okay. And who utilized the services of the RACHEL  
15 data base? Who were the subscribers?

16 A In general I don't know the answer to that.

17 Q Were you involved in contacting the subscribers?  
18 Maybe let me ask my question in a sort of narrative type of  
19 way. I'm trying to get just a general understanding of how  
20 this service came about, and to whom it was providing the  
21 service.

22 A It was providing the service to anyone who asked

1 for it.

2 Q And how did they find out about it?

3 A Word-of-mouth.

4 Q And by whose word-of-mouth? I mean what was the  
5 group of people that was aware of it? Were you in  
6 association or affiliation with other environmental groups  
7 that promoted the RACHEL data base?

8 MR. SMOGER: Objection. Compound, calls for  
9 speculation.

10 MR. ROTH: Join in the objection. If you  
11 understand the question you may answer.

12 THE WITNESS: I don't know who used the data base.  
13 People would just learn about it and ask for an account, and  
14 I would create an account for them, and I did not know who  
15 they were. Most, in the vast majority of cases they were the  
16 general public.

17 BY MR. SCHULTEN:

18 Q Okay. Individuals rather than organizations?

19 A I don't know.

20 Q Okay. Does the Foundation still provide this  
21 electronic data base as one of its services?

22 A Yes.

1 Q Does the Foundation currently have a list of  
2 subscribers to the data base?

3 A The data base has changed in the sense that  
4 subscribers can now sign themselves up to get it. So  
5 somewhere in the computer there is a list of everyone who has  
6 ever signed up. Although they could sign up with any name  
7 that they choose. They don't have to use a real name. So I  
8 have less idea now than I had in 1985 who actually uses the  
9 data base.

10 MR. SMOGER: You don't have any idea then.

11 THE WITNESS: The general public is my idea of who  
12 uses the data base.

13 BY MR. SCHULTEN:

14 Q Okay. We'll come back to that later. What were  
15 your duties, Mr. Montague, during December 1980 through  
16 December 1983 as the project administrator for the Hazardous  
17 Waste Research Program at Princeton University?

18 A To help my colleagues at the University plan and  
19 carry out a research program.

20 Q And what was the particular subject matter of that  
21 research program? Was it any particular hazardous waste site  
22 or incinerator site or sites that were the subject of the

1 research?

2 A In general it was limited to the State of New  
3 Jersey, but there was no particular site. As the résumé  
4 states, it was studying the generation and disposal of  
5 hazardous wastes in New Jersey.

6 MR. SMOGER: That can be a full-time job.

7 BY MR. SCHULTEN:

8 Q And why did you leave that position as project  
9 administrator in December of 1983?

10 A The University terminated the project, the program.

11 Q Did the program produce any report?

12 A We produced a small series of reports, yes.

13 Q And were they published reports?

14 MR. ROTH: I'm going to object to the form.

15 Published in what sense? You mean written down on paper and  
16 handed around in a journal? Maybe you could be a little more  
17 specific.

18 BY MR. SCHULTEN:

19 Q Sure. I'll be glad to. Were they published in any  
20 publication of Princeton University or any other professional  
21 or environmental organization?

22 A A unit of the University published those reports as

1 part of its ongoing series of reports.

2 Q What unit of the University did that?

3 A It's called the Center for Energy and Environmental  
4 Studies in the School of Engineering and Applied Science.

5 Q Were you designated as one of the authors of any  
6 one or more of those reports you just described for me?

7 A Yes.

8 Q How about your position from July 1979 through  
9 December 1980 as a visiting research fellow in the Center for  
10 Energy and Environmental Studies at Princeton University?  
11 What were the projects that you worked on at that time?

12 A I was studying land fills in New Jersey and other  
13 issues related to hazardous materials.

14 Q Your C.V. notes that "hazardous materials,  
15 including radioactive waste." Did your research at that time  
16 involve studies of dioxins?

17 A I don't recall.

18 Q Do you recall whether or not the Hazardous Waste  
19 Research Program that you were the project administrator for  
20 involved research on hazardous waste materials that might  
21 have included dioxins?

22 MR. ROTH: You're talking about 1979 and 1980 now.

1 Is that right?

2 MR. SCHULTEN: No. The first question was '79  
3 through '80 which I believe his answer was he doesn't recall.

4 MR. ROTH: I see. I'm sorry.

5 BY MR. SCHULTEN:

6 Q The next question has to do with his position, his  
7 subsequent position from 1980 through 1983 at the Hazardous  
8 Waste Research Program. And my question with respect to that  
9 is were some of the hazardous wastes that the project was  
10 studying, did those hazardous wastes include dioxins?

11 A You initially ask the question one way, and then  
12 when you rephrase it, you rephrased it another way, and now  
13 I'm confused.

14 Q All right. Do you understand my second question?

15 A Wastes that we were concerned with in New Jersey  
16 very well may have contained dioxins.

17 Q Did your research determine that those wastes did  
18 in fact contain dioxins?

19 MR. SMOGER: Objection. Vague as to time.

20 MR. SCHULTEN: It's 1983.

21 MR. SMOGER: His research at that time?

22 MR. SCHULTEN: Yes.

1 THE WITNESS: I was the project administrator at  
2 that time. Research conducted by my colleagues did identify  
3 dioxins in some of the wastes that they were concerned with.

4 BY MR. SCHULTEN:

5 Q Was that the first time then that you were involved  
6 with a research project that identified dioxins in hazardous  
7 wastes?

8 A I really don't know when the first time occurred.

9 Q Can you recall as you sit here today any study that  
10 you participated in or were involved in in any capacity,  
11 either research or administrative capacity, prior to the  
12 hazardous waste research program that you've just identified  
13 where you were aware that the hazardous waste that you were  
14 researching included dioxins?

15 MR. SMOGER: Objection. Overbroad and vague.

16 MR. ROTH: Join in the objection. As to form  
17 generally.

18 BY MR. SCHULTEN:

19 Q Do you understand the question? I'm trying to  
20 narrow it down. I'll be glad to rephrase it.

21 A I don't know when I first became aware that dioxin  
22 was a problematic waste. I don't know when I first became

1     aware of that.

2           Q     I appreciate that testimony. My question is,  
3     though: when was the first research program that you were  
4     involved in, either in an administrative capacity or in a  
5     research capacity, when was the first research program that  
6     you were involved in that had as a part of its research  
7     hazardous waste that included, that you were aware of,  
8     included dioxins?

9           MR. SMOGER: Objection. Overbroad and compound and  
10    vague.

11          MR. ROTH: Join in the objection.

12          THE WITNESS: My answer is I don't know.

13          BY MR. SCHULTEN:

14          Q     As you sit here today, can you think of a research  
15    project prior to the one you've just described, the Hazardous  
16    Waste Research Program from December '80 through December  
17    '83, can you think of one prior to that that involved  
18    researching hazardous wastes that included dioxin?

19          A     I can think of research projects that I was  
20    associated with that very well may have been concerned with  
21    dioxins, among other hazardous materials.

22          Q     But were they actually identified in those research

1 projects?

2 A I don't recall.

3 Q And did you leave your position as a research  
4 fellow in December 1980 because you had an opportunity to  
5 become the project administrator of the Hazardous Waste  
6 Research Program? Was that the reason for your—

7 A Yes.

8 Q How about your position from January 1972 through  
9 May 1979 as associate professor of architecture and planning  
10 at the University of New Mexico in Albuquerque, what were  
11 your general duties in that position?

12 A I was a professor.

13 Q And what were the subject areas that you taught?

14 A Environmental studies, environmental impact  
15 analysis, and statistics.

16 Q Did your statistics course relate to environmental  
17 research, or was it just a broad statistics general course?

18 MR. ROTH: Object to the form.

19 THE WITNESS: I don't understand the question.

20 BY MR. SCHULTEN:

21 Q Well, the first two courses that you told me about  
22 were both concerned with environmental problems or

1 environmental impact analysis. And now I'm asking you with  
2 respect to the statistics course that you've identified, was  
3 that a statistics course that was taught in conjunction with  
4 these other environmental courses that you were looking at,  
5 statistical analysis for the purpose of the environmental  
6 research?

7 A I was professor of planning. It was statistics for  
8 purposes of planning. It was for planning students.

9 Q So explain to me what that means, planning aspect?

10 A Planning is a course of study at the University of  
11 New Mexico. You get a degree in planning.

12 Q What are you planning? What would the students be  
13 planning?

14 A Urban and rural community development and  
15 environmental quality.

16 Q Would that include things like waste disposal?

17 A It might.

18 Q Did it in your instruction?

19 MR. SMOGER: If you recall.

20 THE WITNESS: In my statistics instruction?

21 BY MR. SCHULTEN:

22 Q And I'm sorry, not just limited to the statistics

1 instruction, but in the courses that you taught there at the  
2 University of New Mexico.

3 A Yes.

4 Q It did include waste disposal?

5 A Yes.

6 Q Did any of your courses that you taught at that  
7 time address problems with disposal or assessment of risk  
8 involving dioxins?

9 A I don't recall.

10 MR. ROTH: We're going to take a break in the next  
11 couple of minutes, so if you want to finish your line of  
12 questioning.

13 MR. SCHULTEN: Yes. That's the last item.

14 MR. ROTH: Shall we take five?

15 MR. SCHULTEN: Sure.

16 (A short break was taken.)

17 BY MR. SCHULTEN:

18 Q Mr. Montague, we've just concluded the summary on  
19 your résumé of your employment positions. I just want to  
20 make sure, did you have any other employment prior to January  
21 1972 when you became an associate professor at the University  
22 of New Mexico? Any jobs prior to that time?

1 MR. SMOGER: Are you talking about working when he  
2 was in high school, that kind of thing?

3 MR. SCHULTEN: No. No.

4 MR. ROTH: You want to go back more than 22 years.  
5 Is that what you're saying?

6 BY MR. SCHULTEN:

7 Q I just wanted to see if there was any other type  
8 of—

9 A I've been employed since I was 16 years old.

10 Q In a variety of different types of positions? Let  
11 me ask this question. Were you employed prior to 1972 in a  
12 capacity as a newspaper reporter or any other journalistic  
13 type of position?

14 A When I was 16 I was employed by the "Fairfield  
15 News" and the "Westport Town Crier" in the State of  
16 Connecticut.

17 Q And what was your position?

18 A I was a general assignment reporter.

19 Q And how long did you work as a general assignment  
20 reporter for that newspaper, those newspapers?

21 A That was a summer job.

22 Q Okay. How about subsequent to that, any other

1 positions as a newspaper reporter or any other type of job in  
2 a journalistic type of position? I don't know if that's the  
3 best way to describe it, but in the broad field of journalism  
4 is what I'm asking now.

5 A I was editorial editor of my high school newspaper.  
6 I was the editor for a time of the Antioch College newspaper.  
7 I worked for a time for "The Bloomington Spectator" in  
8 Bloomington, Indiana.

9 Q What was your position with "The Bloomington  
10 Spectator"?

11 A Writer, reporter.

12 Q What type, general assignment or a specific area of  
13 assignment?

14 A General.

15 Q Let me ask the question, with respect to the  
16 various positions that you've described so far—

17 MR. ROTH: Let me just interrupt you because you  
18 did cut him off.

19 MR. SCHULTEN: Oh, I'm sorry. Go ahead.

20 BY MR. SCHULTEN:

21 Q I'm sorry. Were you not finished?

22 A No, I was not finished.

1 Q Oh, go right ahead. I'm sorry.

2 MR. ROTH: I just want the record to reflect, you  
3 asked him what journalistic in the broad field of journalism,  
4 and then you cut him off after "The Bloomington Spectator"  
5 and asked him specific questions about that. That's fine.  
6 You're entitled to conduct the deposition as you see fit. I  
7 just wanted to state that for the record.

8 BY MR. SCHULTEN:

9 Q No problem. Let's just continue then with your  
10 summary, Mr. Montague, after the Bloomington newspaper.

11 A I worked for a newspaper in Santa Fe, New Mexico  
12 called "The New Mexico Review and Legislative Journal."

13 Q What was your position there?

14 A Associate editor.

15 Q How long were you there?

16 A Two or three years, maybe four years. I don't  
17 really recall very exactly.

18 Q Okay. After that any other positions in  
19 journalism?

20 MR. ROTH: I'm going to object to the form of that  
21 question when you say "positions in journalism." We've  
22 produced a lengthy bibliography of journalistic type

1 articles, whether they were done free-lance or otherwise.

2 Are you including free-lance journalistic work, or—

3 MR. SCHULTEN: No. I'm asking employment  
4 positions.

5 MR. ROTH: Okay. Just so we're clear on that.

6 MR. SCHULTEN: Right.

7 THE WITNESS: I worked for a publication called  
8 "The Workbook."

9 BY MR. SCHULTEN:

10 Q What was your position with "The Workbook"?

11 A I don't remember my title. I was essentially the  
12 editor for the very first few issues, and then I was a  
13 writer, but I don't remember what actual titles I held.

14 Q Okay.

15 A And I edited a newsletter called, I think it was  
16 called "Nuclear Waste News," and I just remembered that I've  
17 omitted one. Back about 1960 or '61 I worked for a magazine  
18 in Mexico City, Mexico called "Mexico Today." And around  
19 that same time I edited a newspaper called "The Gadfly."  
20 Coming back up to the more current time, I was the editor of  
21 "New Jersey Hazardous Waste News" in the mid-1980s.

22 And then I was the editor of what started with the

1 title "Hazardous Waste News," and then changed title to  
2 "RACHEL's Hazardous Waste News," which has now changed its  
3 title once again to "RACHEL's Environment and Health  
4 Weekly."

5 And as far as I recollect, that's all the  
6 journalistic jobs that I've held. That's my best  
7 recollection at the moment.

8 Q I appreciate that very much. That's very thorough.  
9 I asked before when the Environmental Research Foundation  
10 started, and I neglected to ask, and you brought it to my  
11 attention here: When did the first publication of "The  
12 Hazardous Waste News" occur, in generally what year?

13 A I think about 19— "New Jersey Hazardous Waste News"  
14 I believe started in 1981, possibly '82. It was early  
15 eighties.

16 Q Was that also a publication of the Environmental  
17 Research Foundation?

18 A Yes.

19 Q And did that publication then become "The Hazardous  
20 Waste News"?

21 A In my mind they were separate publications. "New  
22 Jersey Hazardous Waste News" was focused on New Jersey.

1 Q Did it continue publication after "Hazardous Waste  
2 News" started, you started editing—

3 A Another organization—

4 MR. SMOGER: You'll have to let him finish. You're  
5 starting to jump each other.

6 BY MR. SCHULTEN:

7 Q Yes. My question was did "New Jersey Hazardous  
8 Waste News" continue publication after you started as the  
9 editor of the "Hazardous Waste News"?

10 A For a short time the "New Jersey Hazardous Waste  
11 News" did continue publication. Another organization was the  
12 publisher.

13 Q You were not concurrently editor of both "New  
14 Jersey Hazardous Waste News" at the same time that you  
15 started what later became "RACHEL's Hazardous Waste News"?

16 A I don't think there was any overlap.

17 Q Okay. That's the question. Now, by their very  
18 titles "Hazardous Waste News," "New Jersey Hazardous Waste  
19 News," "Nuclear Waste News," all, I would assume, concern  
20 various and sundry environmental type concerns. Is that a  
21 fair way to characterize that?

22 MR. ROTH: Object to the form.

1 BY MR. SCHULTEN:

2 Q Let me withdraw that question and just ask  
3 specifically, in your experience with those publications that  
4 I've just mentioned— Well, let's back up. Let's hold  
5 "RACHEL's Hazardous Waste News" because we'll be getting  
6 specifically to the edition in question of this lawsuit in  
7 just a moment.

8 Let's go back to "New Jersey Hazardous Waste News."  
9 In your position as editor of that publication did you ever  
10 edit articles that involved analysis or studies of dioxin?

11 A I believe I did.

12 Q And do you have a general recollection as to what  
13 those articles may have been about beyond just the general  
14 topic, the specific topic of dioxin?

15 A It may have been about herbicides or pesticides,  
16 they may have been about incinerators, they may have been  
17 about sources of dioxin.

18 Q How about articles that were critical of dioxin  
19 studies, studies that involved exposure to dioxin and what  
20 health risk might result from exposure to dioxin? Did you  
21 ever have an article while you were editor of the "New Jersey  
22 Hazardous Waste News" that addressed that subject?

1 MR. SMOGER: Objection. Compound, overbroad.

2 MR. ROTH: Object to the form.

3 MR. SCHULTEN: If you understand the question you  
4 can answer it.

5 THE WITNESS: "I don't recall" is my answer.

6 BY MR. SCHULTEN:

7 Q Okay. How about when you were the editor of the  
8 "Nuclear Waste News," did you ever edit an article for that  
9 publication that involved the topic of dioxin?

10 A No.

11 Q How about "The Workbook" in your position. You  
12 said essentially you were initially the editor, and then you  
13 became a writer. In any of your positions with "The  
14 Workbook" did you ever participate or author articles dealing  
15 with the topic of dioxin?

16 A I don't recall.

17 Q How about the publication "New Mexico Review and  
18 Legislative Journal" for which you were the associate editor,  
19 did you participate in any articles that concerned the topic  
20 of dioxin?

21 A I certainly wrote or edited articles related to  
22 dioxin-contaminated substances. Whether or not we ever

1 mentioned dioxin by name I'm not sure and don't recall.

2 Q Okay. That's my question, whether the article  
3 itself discussed exposure to dioxin, the health risk inherent  
4 with dioxin, things of that nature.

5 A I don't recall.

6 Q And then how about with respect to any other prior  
7 newspaper or publication that you were employed by, "The  
8 Bloomington Spectator," the Antioch college newspaper, the  
9 "Mexico Today" magazine, "The Gadfly," any of those — I'm  
10 just going to lump them into a broad category your prior  
11 experience prior to your work for the "The New Mexico Review  
12 and Legislative Journal" — in your journalistic experience,  
13 prior to that time do you recall as you sit here today any  
14 articles dealing with the topic of dioxin?

15 A No, I do not recall. My answer basically is "I  
16 don't know."

17 Q Right. I understand. I'm just asking for your  
18 best recollection as you sit here today. So that if you did  
19 write an article back in the sixties — I don't even know when  
20 dioxin was first identified as a potential health risk,  
21 sometime in the seventies or so when it was first identified  
22 — do you recall ever being involved, writing an article or

1 editing an article addressing the subject of dioxin?

2 A I don't recall. I've written a lot of things in my  
3 life and I don't recall the answer to your question.

4 MR. SCHULTEN: Okay. I know that you've written a  
5 lot. I've seen the list. And let's mark this as Montague  
6 Deposition Exhibit No. 2.

7 (Exhibit No. 2 [Montague] was  
8 marked for identification.)

9 BY MR. SCHULTEN:

10 Q Mr. Montague, the court reporter has handed over to  
11 your side of the table there a document that was produced by  
12 your attorneys entitled the Written Work of Peter Montague  
13 identified as Deposition Exhibit No. 2. I'd like you to take  
14 a few moments just to glance through that and after you do,  
15 my question is going to be: Are there any other articles that  
16 we need to add to this list that you have authored that are  
17 not included on the list?

18 (Witness reads and confers with Mr. Smoger.)

19 THE WITNESS: In response to an earlier question I  
20 gave you an answer that I now see was not correct. I told  
21 you I worked for a publication called — I think I said  
22 "Nuclear Waste News."

1 MR. SCHULTEN: Yes.

2 THE WITNESS: It was called "WIPP News." WIPP  
3 stands for Waste Isolation Pilot Plant, a nuclear waste  
4 facility in New Mexico. Subsequently the name of that  
5 publication was changed to something like "Nuclear News" or  
6 "Nuclear Waste News," but I was no longer associated with  
7 them at that time.

8 BY MR. SCHULTEN:

9 Q Were you referring to a particular item on your  
10 list of written publications?

11 A Item 48 caught my eye, and I realized when I saw  
12 the words "WIPP News" that that was the name of the  
13 publication that I had previously misnamed in response to one  
14 of your questions.

15 Q WIPP stands for Waste Isolation Pilot Plant.

16 A Pilot plant.

17 Q Okay. Thanks.

18 MR. SMOGER: Look on 52. It's written out.

19 THE WITNESS: Would you repeat your question?

20 BY MR. SCHULTEN:

21 Q Yes. My question is, Mr. Montague: Are there  
22 additional articles that you have authored since November 1,

1 1993 that are not listed on Deposition Exhibit No. 2? I  
2 believe that's the relevant date. This summary goes to  
3 November 1, 1993 is my understanding. So the question would  
4 be: since that time are there other writings?

5 A Yes.

6 Q All right. And what would those be?

7 A I published an article in "E" magazine. The name  
8 of the magazine is "E" the environmental magazine.

9 Q Do you recall the general title or subject of that  
10 article?

11 A The subject was dioxin. Specifically press  
12 coverage of the dioxin issue. I published a couple of  
13 articles in a magazine called "Lies of Our Times" in New  
14 York. I have, of course, published every week an additional  
15 issue of "RACHEL's Hazardous Waste News" until the time its  
16 name changed to "RACHEL's Environmental and Health Weekly."

17 Q And has that continued to be published on a weekly  
18 basis?

19 A Yes.

20 Q There are probably other analyses of individual  
21 problem sites analogous to No. 108.

22 Q When you talk about analyses of sites, you mean

1 land fills and waste disposal sites, things of that nature?

2 A Either sources or disposal sites for dangerous  
3 materials. That's all I recollect at the moment.

4 Q I believe you referred to an article appearing in  
5 "E" magazine in the documents that were produced by your  
6 attorneys. We have a copy of an article that you authored  
7 entitled "Signs of the Times, the Truth about Toxics,"  
8 appearing in "E" magazine in the July/August 1993 issue. Is  
9 that the one that you—

10 A Without seeing it I wouldn't be able to—

11 MR. SCHULTEN: Okay. Let me show that to you.

12 (Document is handed to the witness.)

13 BY MR. SCHULTEN:

14 Q My question is, as you look at that, Mr. Montague,  
15 is that the article that you referred to as the article with  
16 the general subject of dioxin that was published in "E"  
17 magazine?

18 A I think that this is the article that I was  
19 referring to.

20 Q Okay. What's the date of this?

21 A I believe that's the July/August issue.

22 Q I believe that's the July/August issue—

1           A     In '93? It's not listed here? Yes, I think that's  
2     the article that I was referring to.

3           Q     Okay. Thank you. I just wanted to confirm that,  
4     that is not one of the ones that is listed on Exhibit No. 2.

5           A     Correct. I believe it is not listed.

6           Q     I think you also mentioned that you authored a  
7     couple of articles in a publication entitled "Lies of Our  
8     Times."

9           A     Of our times, yes.

10          Q     In the documents that were produced to us there's  
11     an article that appeared in "Lies of Our Times," the May 1993  
12     issue, entitled "The Times" — in quotation marks —  
13     "Detoxifies Dioxin." Is that one of the articles that you  
14     were referring to?

15          A     I would need to see it before I could answer that  
16     question.

17          Q     I'm sorry. I said the wrong issue. It appears in  
18     the January/February 1993 issue of "Lies of Our Times."

19          A     What you've shown me is two articles. I wrote one  
20     of them.

21          Q     The article that you wrote is entitled "The Times  
22     Detoxifies Dioxin."

1           A     It is.

2           Q     Now, that article that we just identified in the  
3 "Lies of Our Times" and the article that appeared in "E"  
4 magazine that you previously reviewed and we identified, both  
5 discuss in the context of those articles the topic of dioxin.

6           A     Dioxin is mentioned in both articles.

7           Q     And it's specifically in the title of this last  
8 article that we—

9           A     Yes, it is.

10          Q     My question is going back: of all of the articles  
11 that you have enumerated on Deposition Exhibit No. 2, I've  
12 read through it, and I know you took time to read through it  
13 carefully and all. Is there any article that you had  
14 authored that is enumerated on Deposition Exhibit No. 2 that  
15 discusses, that names dioxin in its title?

16               MR. ROTH: Let me just observe for the record that  
17 each of the "RACHEL's Hazardous Waste News" are not  
18 separately itemized. And so to the extent that—

19               MR. SCHULTEN: I'm just talking about these  
20 articles, the articles that are contained in the Exhibit.

21               MR. ROTH: You mean does the word "dioxin" appear  
22 anywhere in that document?

1 MR. SCHULTEN: That's the first question. Right.

2 THE WITNESS: I'm going to have to reread the  
3 document to give you a correct answer looking for the word  
4 "dioxin" because I don't know the answer.

5 BY MR. SCHULTEN:

6 Q Well, okay. Let me tell you where I'm going so  
7 that maybe we can shortcut the route to getting there. All  
8 I'm trying to get at is: when was the first article that you  
9 authored that addressed the subject of dioxin specifically  
10 naming dioxin, discussing its risks and the like?

11 A I really don't know the answer to that. I just  
12 don't know.

13 Q Do you have a general recollection?

14 A I do not.

15 Q Well, rather than having to take the time for you  
16 to reread the entire Exhibit, I think the Exhibit itself will  
17 indicate whether or not "dioxin" appears in the title of any  
18 of the articles.

19 MR. ROTH: It may not reveal whether dioxin was  
20 addressed in the article.

21 MR. SCHULTEN: Well, I understand that.

22 MR. ROTH: Okay.

1 BY MR. SCHULTEN:

2 Q As you sit here today, Mr. Montague, do you have  
3 any general recollection of when you first authored an  
4 article that addressed dioxin studies reviewing, analyzing,  
5 criticizing any dioxin study? Do you have a general  
6 recollection as to when you might have first authored an  
7 article on that topic?

8 MR. SMOGER: Objection. Foundation and overbroad,  
9 compound.

10 MR. ROTH: Join in the objection.

11 MR. SCHULTEN: Well, I think we'll all agree that  
12 the article that appeared in Edition No. 171 of "RACHEL's  
13 Hazardous Waste News" was an article that was critical of a  
14 dioxin study.

15 BY MR. SCHULTEN:

16 Q Do you agree with that?

17 MR. ROTH: Object to the form.

18 THE WITNESS: The article that appeared in 171 was  
19 a report that federal officials of two federal governments,  
20 the government of Germany and the government of the United  
21 States, had adduced evidence that certain dioxin studies had  
22 been manipulated to make it appear that dioxin had not harmed

1 dioxin-exposed humans, when in fact, according to those  
2 federal officials, there was evidence that harm had occurred.

3 Q Okay. My question is: Prior to your publication of  
4 that article in Edition 171, have you ever published or  
5 authored an article that discussed or criticized a dioxin  
6 study?

7 MR. ROTH: Objection as to form.

8 BY MR. SCHULTEN:

9 Q Can you recall? I'm just asking as you sit here,  
10 can you recall as you sit here before that article?

11 A I cannot recall. I don't know.

12 Q That's fine. Back to your educational training  
13 now. Where did you do your undergraduate studies?

14 A I was an undergraduate at the University of New  
15 Mexico—No. I'm sorry. At the University of Virginia, at  
16 Antioch College, and University of the Americas.

17 Q Was that listed in chronological order?

18 A Yes.

19 Q Okay. Approximately when did you do your  
20 undergraduate studies at the University of Virginia?

21 A '58-'59.

22 Q And did you have a major?

1           A     I was a freshman. I don't think I had a major.

2           Q     You never declared a major. And why did you leave  
3 the University of Virginia?

4           A     Because I wanted to.

5           Q     Pardon me.

6           A     Because I wanted to.

7           Q     Okay. Was that just two semesters at the  
8 University of Virginia or—

9           A     I'm not even sure it was on the semester system. I  
10 don't recall what system it was on.

11          Q     Okay. Based on calendar years, it was just one  
12 calendar year?

13          A     I was there for one calendar year and a portion of  
14 the second calendar year.

15          Q     Did you take any courses in journalism at the  
16 University of Virginia?

17          A     I don't think I did.

18          Q     Did you take any courses in chemistry?

19          A     No.

20          Q     When were you at Antioch College?

21          A     1959-1960.

22          Q     Did you have a major while you were at Antioch

1 College?

2 A I don't know whether I had to declare a major.

3 Q Do you recall whether or not you took any

4 journalism courses at Antioch College?

5 A I was the editor of the College newspaper.

6 Q Did you take journalism courses?

7 A I don't believe that I did.

8 Q Did you take any courses in chemistry?

9 A No.

10 Q Take any science in the broad category of science,  
11 any science studies at all while at Antioch College?

12 MR. ROTH: Does that include political science?

13 MR. SCHULTEN: No. I think Mr. Montague understood  
14 the scope of my question.

15 MR. ROTH: I don't know.

16 THE WITNESS: I don't think so, but I'm not sure.

17 BY MR. SCHULTEN:

18 Q Did you receive a degree from Antioch College?

19 A No.

20 Q Why did you leave Antioch College?

21 A Because I chose to, I wanted to.

22 Q Did you then go directly to the University of the

1 Americas in Mexico City?

2 A I don't understand the question.

3 Q After concluding the last term or semester,  
4 whatever it was at Antioch College, what's the next thing you  
5 did? Did you go on continuing your education at the next  
6 institution you mentioned, or did you take a hiatus and go to  
7 work for somebody? Or what did you do after you left  
8 Antioch?

9 A Between the time I left Antioch and the time I  
10 matriculated at the University of the Americas there would  
11 have been a summer, and I would have held a job, but I don't  
12 recall at this moment what that job was.

13 Q Would that have been the summer of 1961? You left  
14 Antioch College in 1961.

15 A I think that— I may be off by a year. Maybe I was  
16 at Antioch in '59 and '60. It's a long time ago.

17 MR. SMOGER: I was waiting for you to say that.

18 THE WITNESS: I don't remember. Of course I can,  
19 of course, reconstruct it if I had some documentary evidence,  
20 but I don't right here right now.

21 BY MR. SCHULTEN:

22 Q That's all right. I'm just asking for your best

1 recollection as you're sitting here.

2 A I think I left Antioch in the summer of 1960 and  
3 started at University of the Americas which was then called  
4 something else in the fall of 1960. That's my best  
5 recollection.

6 Q Would it have been called Mexico City College?

7 A Yes.

8 Q Okay. And how long were you at Mexico City  
9 College?

10 A I believe I was awarded my undergraduate degree at  
11 the end, approximately the end of calendar year 1961.

12 Q And that was a Bachelor of Arts degree?

13 A I believe so.

14 Q And what was your major?

15 A Journalism.

16 Q And did you have a minor?

17 A I really don't know.

18 Q Do you recall whether or not you had any science  
19 studies while at Mexico City College?

20 A I really don't know. I don't know all the courses.  
21 I cannot recollect all the courses that I took at Mexico City  
22 College.

1 Q Let me ask this question. With respect to all of  
2 your undergraduate studies do you recall whether or not you  
3 ever had a course dealing with or on the subject of  
4 epidemiology?

5 A I don't understand the question.

6 Q Do you have an understanding of what epidemiology  
7 is?

8 A I believe I do.

9 Q What is your understanding of epidemiology?

10 A Epidemiology is the study of the distribution of  
11 disease and death in human populations.

12 Q Are you familiar with the ways in which  
13 epidemiological studies are conducted?

14 MR. SMOGER: Objection. Overbroad.

15 MR. ROTH: Yes. Objection as to form.

16 MR. SCHULTEN: If you understand the question, you  
17 can answer it.

18 THE WITNESS: I don't understand the question.

19 BY MR. SCHULTEN:

20 Q Is it your understanding that epidemiologists only  
21 use one methodology in their study of the distribution of  
22 diseases and death in the human population, or do they use

1 many methodologies?

2 MR. SMOGER: Objection. Compound. Foundation.

3 THE WITNESS: I don't understand the question.

4 BY MR. SCHULTEN:

5 Q Do you have any understanding of the methodologies  
6 that are utilized in epidemiological studies?

7 MR. SMOGER: Objection. Compound, overbroad.

8 THE WITNESS: I don't understand the question.

9 BY MR. SCHULTEN:

10 Q Do you understand what the word "methodology"  
11 means?

12 A Methodology would be the study of methods.

13 Q And the application of methodology in a particular  
14 analysis, do you understand my question when I say types of  
15 methodologies that would be used by epidemiologists in their  
16 studies?

17 A Types?

18 MR. SMOGER: Objection. Overbroad, compound,  
19 foundation.

20 THE WITNESS: Types of methodologies to me would be  
21 categories of methods, categories of studies of methods.

22 Methodology is the study of methods. So types of methodology

1 would be categories of studies of methods.

2 BY MR. SCHULTEN:

3 Q Okay. Can you describe for me one method that an  
4 epidemiologist may use in conducting his studies of the  
5 distribution of disease in human population?

6 MR. SMOGER: Objection. Vague, ambiguous, and  
7 overbroad.

8 THE WITNESS: I don't understand the question.

9 BY MR. SCHULTEN:

10 Q Do you have an understanding of one or more methods  
11 that an epidemiologist may use in conducting an  
12 epidemiological study?

13 A I have read hundreds of epidemiological studies,  
14 and I have, therefore, some understanding of the methods that  
15 are sometimes employed by epidemiologists.

16 Q Okay. Can you give me a general time frame in  
17 which you have read these hundreds of epidemiological  
18 studies?

19 A During the last 20 or 25 years.

20 Q Do you have an understanding of the significance of  
21 an epidemiological study that focuses on a chronic cause for  
22 a particular disease? Do you understand what I mean by that?

1           A     That was a complicated question and I did not  
2 understand it.

3           Q     From your reading of these many epidemiological  
4 studies can you explain to me today what your understanding  
5 is of an epidemiological study that would focus on a chronic  
6 causal factor?

7           MR. SMOGER: Objection. Foundation, vague and  
8 ambiguous.

9           MR. ROTH: Just object to that form generally.

10          THE WITNESS: I don't understand the question.

11          BY MR. SCHULTEN:

12          Q     Do you understand what the word "chronic" means?

13          A     I think I do.

14          Q     What is your understanding?

15          A     "Chronic" has various meanings.

16          Q     Okay.

17          A     "Chronic" means, sometimes it means ongoing,  
18 sometimes it means long-term, sometimes it means delayed, and  
19 it may have other meanings as well. But those are the three  
20 that come to mind at the moment.

21          Q     Okay, now. Drawing upon your understanding that  
22 you've derived from reading these epidemiological studies, my

1 question is: Do you have an understanding of the significance  
2 of a chronic cause in an epidemiological analysis?

3 MR. SMOGER: Objection. Vague, ambiguous and  
4 overbroad.

5 MR. ROTH: Objection as to form, and not reasonably  
6 calculated to lead to the discovery of admissible evidence.

7 THE WITNESS: I don't understand the question.

8 BY MR. SCHULTEN:

9 Q Well, in all these epidemiological studies that  
10 you've read you've referred to many, many, many that you've  
11 read. Do you have an understanding of what the significance  
12 is of a chronic causal factor in an epidemiological study?

13 MR. SMOGER: Objection. Overbroad, and vague and  
14 ambiguous.

15 THE WITNESS: I do not understand the question in a  
16 way that allows me to give you an answer.

17 BY MR. SCHULTEN:

18 Q What part of my question don't you understand?

19 MR. ROTH: Well, rather than getting into a  
20 colloquy about it, I think the witness has been responsive  
21 all day long. I think it's your obligation to pose questions  
22 that the witness can understand. And, you know, just based

1 on my own reading in this area, I can see where— And I think  
2 I have an understanding what the problem is. But rather than  
3 engaging back and forth with the witness, why don't you just  
4 try to— Why don't you just work it from another side and  
5 maybe we can get to a question that's framed in a way that he  
6 can answer. I don't think he has an obligation to explain to  
7 you or try to explain to you what he doesn't understand. And  
8 I just think you have an obligation to pose a question in a  
9 way that he can understand it.

10 MR. SCHULTEN: That's an interesting position.

11 MR. SMOGER: He can't speculate on what's in your  
12 mind. If he doesn't understand something, he doesn't  
13 understand it.

14 MR. ROTH: Right.

15 BY MR. SCHULTEN:

16 Q I'm asking him what part of my question he does not  
17 understand. But I will go on. I'll rephrase it.

18 Let's move on. I may have asked you this question  
19 already, but let's make sure that we've covered it. In all  
20 of your undergraduate studies, Mr. Montague, did you take a  
21 course in epidemiology?

22 A No.

1           Q     Okay. So your understanding of epidemiology— Let  
2 me ask the question this way. What is the source of your  
3 understanding, what is the source of the information of your  
4 understanding of epidemiology?

5           A     My life experience is the source of all my  
6 knowledge.

7           Q     And specifically your knowledge of epidemiology is  
8 the source of your understanding the articles, the general  
9 articles that you've referred to, hundreds of articles on  
10 epidemiological studies that you've read?

11          A     That's one portion of my life experience. My  
12 entire experience has led me to my present understanding of  
13 epidemiology.

14          Q     Anything beyond your general life experience and  
15 the reading of these articles, any other specific items,  
16 sources of information?

17          A     The work that I've done for 25 years, the people  
18 that I've talked to for 25 years, the analyses that I myself  
19 have done over 25 years, the thinking that I've done over 25  
20 years, my life experience over the last 25 years has led to  
21 my current understanding of, among other things, my present  
22 understanding of epidemiology, among other things.

1           Q     You mentioned your analyses that you performed.  
2     Have you ever performed an epidemiological study yourself?

3           MR. ROTH: I'm going to object to the question to  
4     the extent that it calls for any analyses or work that the  
5     witness may have done at the request of counsel as protected  
6     by the attorney/client privilege, and the attorney  
7     workproduct. Subject to that.

8           MR. SMOGER: Are you asking before 171 was written?  
9     Is it limited to that?

10          MR. SCHULTEN: Actually probably before. Well, in  
11     order to be concerned with Eddie's objection, before this  
12     litigation. Let's just talk about the time period before  
13     this lawsuit, moving back.

14          BY MR. SCHULTEN:

15          Q     Prior to this lawsuit had you ever performed  
16     yourself an epidemiological study?

17          MR. SMOGER: You're asking for the contemplation of  
18     litigation. I think that the initiation, correspondence from  
19     your client emanated before the lawsuit was actually filed.

20          MR. SCHULTEN: You're exactly right, Gerson. Let  
21     me just specify that then. Before—

22          MR. ROTH: July 5th, 1990.

1           MR. SCHULTEN: July 5th, 1990, right. That was the  
2 first— Or let's even do it this way. Let's take March 7th,  
3 1990 since that's the date that started it all. Let's talk  
4 about before March 7th, 1990.

5           BY MR. SCHULTEN:

6           Q     Did you ever yourself, Mr. Montague, perform an  
7 epidemiological study?

8           A     No.

9           Q     Have you ever been asked to review draft, drafts of  
10 epidemiological studies before their publication? And again,  
11 this is in the time context prior to March 7, 1990.

12          A     I've been asked to review numerous documents over  
13 the last 25 years, and I do not recall the specifics of all  
14 those documents. So I have to say I don't know.

15          Q     Okay. Could you name for me, as you sit here  
16 today, epidemiologists that you have had discussions with  
17 concerning their epidemiological studies? I believe you  
18 mentioned that that was part of the life experiences that  
19 you've gained your understanding from.

20                 Can you name for me one or more epidemiologists  
21 that you've had discussions with concerning—

22           MR. ROTH: Let me object. Are you done with the

1 question?

2 MR. SCHULTEN: —concerning their epidemiological  
3 studies?

4 MR. SMOGER: Again, before March 7, 1990?

5 MR. SCHULTEN: Yes.

6 MR. ROTH: Let me just object to the form since  
7 there's no— you haven't defined what an epidemiologist is.

8 MR. SCHULTEN: Oh, he's defined epidemiology for  
9 me.

10 MR. ROTH: But he hasn't defined what is an  
11 epidemiologist.

12 BY MR. SCHULTEN:

13 Q Okay. Let's do that then, and then I'll ask the  
14 question. Dr.— excuse me. Mr. Montague, what is your  
15 understanding of an epidemiologist?

16 A The word is used by various people to mean various  
17 things.

18 Q How do you use it and what do you mean?

19 MR. ROTH: Objection as to form and lack of  
20 foundation. He never said he uses it.

21 THE WITNESS: I use the word to mean different  
22 things in different contexts, as many words that I use mean

1 different things in different contexts.

2 BY MR. SCHULTEN:

3 Q Okay. That's fair enough. Let's just go ahead and  
4 define it for our context here today, and let's say that an  
5 epidemiologist is a person who performed epidemiological  
6 studies, and just limit it to a person who performs  
7 epidemiological studies.

8 Now, with that limiting definition, I'd like, if  
9 you can, if you can recall, for you to name for me one or  
10 more epidemiologists who have discussed with you their  
11 epidemiological studies.

12 MR. SMOGER: Going up until March 1990?

13 MR. SCHULTEN: March 7, 1990, correct.

14 THE WITNESS: Prior to March 7th?

15 MR. SCHULTEN: Prior to. Correct.

16 THE WITNESS: Prior to March 7th, 1990.

17 MR. ROTH: And only limited to the studies that  
18 they themselves have performed as opposed to other  
19 epidemiologists?

20 MR. SCHULTEN: That's the question I've asked.

21 MR. ROTH: Okay.

22 THE WITNESS: Richard Clapp.

1 BY MR. SCHULTEN:

2 Q Richard— I'm sorry. I missed his last name.

3 A Clapp, C-l-a-p-p.

4 Q Okay. Anyone else?

5 A Ellen Silbergeld.

6 Q Okay. Anyone else?

7 (The witness confers with Mr. Smoger.)

8 THE WITNESS: No, but he asked specific names.

9 (Mr. Smoger confers with the witness.) I mean over the last  
10 25 years there are probably dozens of people who have  
11 conducted epidemiological studies with whom I have talked  
12 about their work.

13 BY MR. SCHULTEN:

14 Q I understand that. I'm just asking what you—

15 A Many of whom I cannot recall today because they're  
16 in the distant past.

17 Q Sure. That's fine. Just those that you can recall  
18 today besides Richard Clapp and Ellen Silbergeld. Anybody  
19 else?

20 A Tom Webster, Devra Lee Davis. I don't think I  
21 talked to Devra Lee Davis prior to March 1990, so I think  
22 she's probably not a good— that's probably a wrong answer.

1 Q Okay. That's fine. I appreciate that.

2 A I have trouble with the date because it wasn't a  
3 very important date at the time. So I don't tend to date my  
4 life in terms of that date.

5 Q I understand. And if you can, if you recall  
6 someone who you may have discussed, they might have been  
7 prior to or in that general time frame, discussed with them  
8 an epidemiological study that they performed, that's fine.

9 (Mr. Smoger confers with the witness.)

10 THE WITNESS: There were literally dozens, but I  
11 don't know.

12 BY MR. SCHULTEN:

13 Q There are dozens more that you had a general  
14 recollection of, but you're not specifically sure whether you  
15 talked to them before March the 7th of 1990. Is that  
16 correct?

17 MR. SMOGER: Put it in the context of the eighties.

18 THE WITNESS: Peter Kahn, Lennart Hardell. What's  
19 Ericksson's first name?

20 MR. SMOGER: Michael.

21 THE WITNESS: Michael Ericksson. The School of  
22 Medicine and Dentistry at New Jersey? I'm drawing blanks on

1 names. I can see faces.

2 MR. SCHULTEN: Maybe over the lunch period you may  
3 recall others. That's fine, and we'll just pick it up after  
4 lunch at this point, if that's agreeable to everybody.

5 MR. ROTH: Do you want to sit here a few more  
6 minutes and see if there are others you can recall? I mean  
7 you're always free to supplement the deposition as you go  
8 along as other names occur to you.

9 MR. SMOGER: Let's go to lunch.

10 MR. SCHULTEN: We'll take lunch then.

11 (A luncheon break was taken.)

12 BY MR. SCHULTEN:

13 Q Mr. Montague, we'll continue the deposition now  
14 after our lunch break. Prior to the lunch break I was asking  
15 you to see if you could recall the names of epidemiologists,  
16 meaning people who performed epidemiological studies who you  
17 can recall having discussions with. You named several. Can  
18 you recall now any others?

19 A I can recall a few others, yes.

20 Q Okay. Who are they?

21 A Joseph Waggoner, Beverly Paigen.

22 Q How do you spell her last name?

1 A P-a-i-g-e-n.

2 Q Okay.

3 A Joseph Highland, Herbert Needleman.

4 Q Needleman?

5 A Needleman.

6 Q Okay.

7 A Thomas Clarkson, Theodora, I believe it is,  
8 Colborn.

9 Q Any others?

10 A That's all I can recall at the moment.

11 Q Very good.

12 A I know that there are others, but I can't recall  
13 the last names.

14 Q Fair enough. That's fine. Let me just briefly ask  
15 you a couple questions with respect to each of the people  
16 that you've named. The first question would be, can you  
17 recall the general subject matter of the epidemiological  
18 study that Richard Clapp performed, and about which you  
19 discussed with Mr. Richard Clapp?

20 A Doctor.

21 Q Dr. Clapp.

22 A Cancer.

1 Q Do you recall whether or not that epidemiological  
2 study involved dioxin in any way?

3 A I do recall.

4 Q Yes or no. Did it involve dioxin or did it not?

5 A Some did.

6 Q Some of his studies?

7 A Some of his studies did.

8 Q And do you recall that you discussed those studies  
9 which involved dioxin with Dr. Clapp?

10 A I don't remember the details of our conversations.

11 Q Do you recall when Dr. Clapp performed his  
12 epidemiological studies that involved dioxin?

13 A Late eighties, early nineties. Mid- to late  
14 eighties, early nineties.

15 Q And do you recall whether you had discussions with  
16 Dr. Clapp concerning those epidemiological studies during  
17 that same time frame, mid- to late eighties, early nineties?

18 A Generally in that time frame.

19 Q As early as the mid-eighties, do you recall?

20 A I don't recall when I first began to talk to Clapp  
21 about his work.

22 Q How about Ellen Silbergeld, do you recall the

1 general subject matter of the epidemiological studies that  
2 Dr. Silbergeld performed?

3 A Lead and dioxin.

4 Q Do you recall approximately when Dr. Silbergeld  
5 performed her studies that involved dioxins?

6 A Possibly as early as the late seventies, certainly  
7 by the early eighties, and ongoing after that.

8 Q And do you recall when you first had the occasion  
9 to discuss with Dr. Silbergeld her epidemiological studies  
10 involving dioxin?

11 A I began talking to her in the late seventies, and  
12 it was generally on the subjects that I described to you,  
13 lead and dioxins. When my first conversation about dioxins  
14 occurred with her I cannot recall.

15 Q Okay. That's fine. How about Tom Webster, do you  
16 recall the general subject matter of the epidemiological  
17 studies that Dr. Webster performed?

18 A Dioxins and perhaps other materials as well.

19 Q Do you recall when Dr. Webster performed his  
20 studies involving dioxins?

21 MR. SMOGER: That's a Mister.

22 MR. SCHULTEN: Oh, that's a Mister. Thanks.

1 THE WITNESS: Early eighties, I believe, but I'm  
2 not sure.

3 BY MR. SCHULTEN:

4 Q And do you recall: when did you first start having  
5 discussions with Mr. Webster regarding his studies involving  
6 dioxins?

7 A No, I don't recall.

8 Q Do you recall whether it was approximately the same  
9 time he was actually performing the studies, or was it  
10 sometime after he had performed the studies?

11 A I don't recall.

12 Q Do you recall the last time you had any discussions  
13 with Mr. Webster regarding any of his epidemiological  
14 studies?

15 A Probably within the last month.

16 Q Within the last month you've had a discussion with  
17 Mr. Webster?

18 A I've had communications with him.

19 Q Concerning one of his epidemiological studies?

20 A Among other things.

21 Q I understand. Was that a study that involved  
22 dioxin?

1           A     Yes.

2           MR. SMOGER: To the extent that any conversations  
3 took place with him at the request of your attorneys or  
4 relating to any of the matters in this litigation, don't go  
5 into that. If it's something entirely separate, then you  
6 can.

7           MR. SCHULTEN: I don't intend at this point to get  
8 into the actual subject matter of those discussions.

9           BY MR. SCHULTEN:

10          Q     Let's move on to Devra Lee Davis. Do you know  
11 whether or not any of the epidemiological studies--

12          MR. SMOGER: Didn't he actually retract that name?

13          THE WITNESS: Yes. I told you that she was a  
14 person that--

15          MR. SCHULTEN: Later?

16          THE WITNESS: Yes. It occurred after March of  
17 1990. I did not meet her until I was in Washington, D.C.,  
18 which was '91. So Devra does not meet the time criterion  
19 that you set.

20          BY MR. SCHULTEN:

21          Q     Okay. I understand you didn't meet her until 1991.  
22 Do you know whether or not, though, any of the

1 | epidemiological studies that — is it a Doctor or a Ms.?

2 |       A     Doctor.

3 |       Q     —Dr. Davis performed involved dioxins?

4 |       A     I don't know.

5 |       Q     How about Peter Kahn, and how do you spell Mr. or

6 | Dr. Kahn's last name?

7 |           MR. SMOGER: It's Dr. Kahn. Everybody else is

8 | Doctor. K-a-h-n.

9 |           MR. SCHULTEN: K-a-h-n?

10 |          MR. SMOGER: Mm-hm.

11 |          BY MR. SCHULTEN:

12 |       Q     Okay. That question with respect to Dr. Kahn is:

13 | do you know whether or not any of the epidemiological studies

14 | that Dr. Kahn performed involved dioxins?

15 |       A     I do know.

16 |       Q     And did they?

17 |       A     Yes.

18 |       Q     And do you know when he performed those studies?

19 |       A     They were ongoing in the 1980s. I don't know when

20 | they began.

21 |       Q     Do you recall when you first had the occasion to

22 | speak with Dr. Kahn concerning his studies that involved

1 dioxin?

2 A No, I don't.

3 Q Sometime in the 1980s?

4 A I believe so.

5 Q How about Dr. Lennart Hardell?

6 A Hardell.

7 Q With respect to Dr. Hardell, do you know whether or  
8 not any of the epidemiological studies Dr. Hardell performed  
9 involved dioxin?

10 A I do know.

11 Q And did they?

12 A Yes.

13 Q Do you know when his studies that involved dioxins  
14 started?

15 A Sometime in the 1970s, I believe.

16 Q And do you recall when you first had occasion to  
17 discuss with Dr. Hardell his studies that involved dioxin?

18 A No, I don't.

19 Q Would it have been in the early 1980s  
20 approximately?

21 A I would think late 1980s, but I don't know.

22 Q How about Dr. Michael Ericksson, did any of the

1 | epidemiological studies that Dr. Ericksson performed involve  
2 | dioxin?

3 |       A     Yes.

4 |       Q     And do you know when Dr. Ericksson's studies  
5 | involving dioxin started?

6 |       A     No.

7 |       Q     Do you know when they were ongoing?

8 |       A     In the 1980s, probably also in— possibly—

9 |       MR. ROTH: If you know.

10 |       THE WITNESS: No, I don't know.

11 |       MR. SMOGER: Don't guess.

12 |       THE WITNESS: I don't know.

13 |       BY MR. SCHULTEN:

14 |       Q     That's fine. Do you recall when you had the first  
15 | occasion generally, approximate date, first occasion to  
16 | discuss with Dr. Ericksson his epidemiological studies  
17 | involving dioxin?

18 |       A     Late 1980s is the best I can give you as an answer.

19 |       Q     That's fine. How about Dr. Joseph Waggoner? And  
20 | my question is: do you know whether or not any of the  
21 | epidemiological studies that Dr. Waggoner performed, did they  
22 | involve dioxin?

1 A Not as far as I know.

2 Q Do you know the general subject matter of Dr.  
3 Waggoner's epidemiological studies?

4 A I do.

5 Q What was that?

6 A Ionizing radiation.

7 Q How about Dr. Beverly Paigen? Is that correct?

8 MR. SMOGER: (Nods.)

9 BY MR. SCHULTEN:

10 Q Did Dr. Paigen's epidemiological studies involve  
11 dioxin?

12 A Dioxin and numerous other dangerous materials.

13 Q And do you recall when Dr. Paigen's studies that  
14 involve dioxin started?

15 A Late 1970s.

16 Q And do you recall when you had the first occasion  
17 to discuss with Dr. Paigen her studies involving dioxin?

18 A Early 1980s.

19 Q Okay. And Dr. Joseph Highland, did Dr. Highland's  
20 epidemiological studies involve dioxin?

21 A Dioxin and numerous other dangerous materials.

22 Q And do you know when Dr. Highland's epidemiological

1 studies involving dioxin began?

2 A Late 1970s.

3 Q And do you recall when you had the first occasion  
4 to discuss with Dr. Highland his studies that involved  
5 dioxin?

6 A Early to mid-1980s.

7 Q Okay. Dr. Herbert Needleman. Did Dr. Needleman's  
8 studies involve dioxin?

9 A I believe not.

10 Q Do you know what was the general subject matter of  
11 Dr. Needleman's studies?

12 A Lead.

13 Q How about Dr. Thomas Clarkson, did his studies  
14 involve dioxin?

15 A I believe not.

16 Q What was the general subject of Dr. Clarkson's  
17 epidemiological studies?

18 A Mercury and other toxic metals.

19 Q How about Dr. Theodora Colborn, did her studies  
20 involve dioxin?

21 A Dioxin and numerous other dangerous materials.

22 Q And do you know when Dr. Colborn started her

1 studies that involved dioxin?

2 A In the 1980s, I believe.

3 Q And do you recall when your discussions with Dr.  
4 Colborn regarding her studies involving dioxin first,  
5 approximately first occurred?

6 A Late 1980s.

7 Q Okay. Let's get back to your educational  
8 experience. We came through your Bachelor of Arts degree in  
9 journalism at the University of the Americas. After  
10 obtaining that degree, did you pursue additional studies?

11 A I did.

12 Q And at what institutions? What was the next  
13 college or university that you attended?

14 A Indiana University.

15 Q And what was your course of studies at Indiana  
16 University?

17 A American studies.

18 Q Did you obtain a degree?

19 A I did.

20 Q And what was that degree?

21 A Master of Arts with an emphasis on English.

22 Q And did you obtain that degree in June of 1967?

1           A     That sounds right.

2           Q     During your Master's degree studies at Indiana  
3 University did you take any courses in epidemiology?

4           A     No.

5           Q     Did you take any courses in toxicology?

6           A     No.

7           Q     Do you recall whether or not you took any science  
8 courses, physical science or chemistry-related type courses.

9           A     I do recall.

10          Q     What do you recall?

11          A     I recall not taking any of those courses that you  
12 described.

13          Q     After obtaining your Master's degree at Indiana  
14 University, did you pursue additional studies?

15          A     I did.

16          Q     And what was the next institution, college or  
17 university that you attended?

18          A     The University of New Mexico.

19          Q     And what was your course of studies at the  
20 University of New Mexico?

21          A     I pursued a Ph.D. in American studies.

22          Q     And did you obtain that degree there?

1           A     I did.

2           Q     And did you obtain that degree in December of 1971?

3           A     Yes.

4           Q     And did you write a doctoral dissertation as part  
5 of the requirements for that degree?

6           A     Yes.

7           Q     What was the general subject matter of your  
8 dissertation?

9           A     It was mercury contamination of the natural  
10 environment. It was a case study of pesticides polluting  
11 ground water in northern New Mexico, and it was a study of  
12 the historical roots of the ideas on public interest science  
13 as enunciated by Barry Commoner and Ralph Nader.

14          Q     Was that dissertation subsequently published in any  
15 professional journal?

16          A     A portion of it appeared in a magazine called  
17 "Audubon." A portion of it appeared as a book. And that's  
18 all I can remember publishing out of my dissertation at the  
19 moment.

20          Q     Can you recall what book a portion of the  
21 dissertation was published in?

22          A     Well, it was revised and it became a book called

1 "Mercury."

2 Q Was there an editor of that book or—

3 A There was a co-author, my wife Katherine co-  
4 authored the book with me.

5 Q Okay. I believe that's listed on your written  
6 work, Deposition Exhibit No. 2 as Item No. 3. Is that  
7 correct?

8 A Yes.

9 Q During your course of studies for your Ph.D. at the  
10 University of New Mexico did you take any courses in  
11 epidemiology?

12 A No.

13 Q Did you take any courses in toxicology?

14 A No.

15 Q And after you obtained your Ph.D. degree in  
16 December of 1971, did you then take your position as  
17 associate professor of architecture and planning at the  
18 University of New Mexico that we previously discussed?

19 A In January of 1972 I began my employment with the  
20 School of Architecture and Planning at the University of New  
21 Mexico.

22 Q Okay. Briefly, Mr. Montague, let's go through the

1 | memberships on your résumé that you have listed, both that  
2 | are on there and the two additional ones that you added  
3 | earlier. First one is American Association for the  
4 | Advancement of Science. Can you tell me approximately when  
5 | you became a member of that organization?

6 |       A     Late 1970s.

7 |       Q     Have you ever held any office in that organization?

8 |       A     No.

9 |       Q     Okay. How about the Federation of American  
10 | Scientists, when did you begin your membership with that  
11 | organization generally?

12 |       A     Probably mid- to late 1970s.

13 |       Q     And have you ever held an office in that  
14 | organization?

15 |       A     No.

16 |       Q     How about the Society of Environmental Journalists?  
17 | When did you begin your membership with that organization?

18 |       A     When the organization was— Not very long. A few  
19 | years ago.

20 |       Q     Just within the last few years?

21 |       A     Yes.

22 |       Q     Were you one of the organizers of that

1 organization, one of the initial organizers?

2 A I was one of the early members.

3 Q Do you or have you held an office in that  
4 organization?

5 A No.

6 Q How about the American Public Health Association,  
7 when did you begin your membership with that organization?

8 A A couple of years ago. Three years ago maybe.

9 Q And have you held an office in that organization?

10 A No.

11 Q How about the— I believe it was the— I may not have  
12 the entire name, but you added the Chemical Society.

13 A American Chemical Society.

14 Q Right. You said you started your membership with  
15 them within the last six months. Is that correct?

16 A I was a member in the 1970s, and then I let my  
17 membership lapse, and I rejoined recently.

18 Q Have you ever held any office in that organization?

19 A No.

20 Q And then when did you start your membership with  
21 the National Writers Union?

22 A Just recently.

1 Q And have you ever held an office?

2 A No.

3 Q Have you ever received any awards from any of the  
4 organizations that we've just discussed?

5 A No.

6 Q Have you ever received any honors or awards from  
7 any other institution or organization?

8 MR. ROTH: By honors and awards do you mean  
9 appointments to advisory posts and that sort of thing?

10 MR. SCHULTEN: No. Not really. I was thinking  
11 about a specific award given by an organization or an  
12 institution, or an honorary degree from an institution,  
13 something of that nature, rather than a functional type  
14 position.

15 MR. ROTH: I see.

16 MR. SCHULTEN: Something of that nature, an award  
17 of an honor from any organization or institution.

18 THE WITNESS: Can I confer with my attorney here?  
19 (Confers with Mr. Smoger.)

20 THE WITNESS: Yes, there have been a few  
21 environmental organizations that have given me awards.

22 BY MR. SCHULTEN:

1 Q Okay. What type of awards have you received from  
2 environmental organizations?

3 A I don't remember the titles. They just give you a  
4 plaque that says, you know, we're grateful for your service  
5 on behalf of our members and the natural environment. I'm  
6 paraphrasing. I don't remember exactly what they say.

7 Q That's fine. Do you remember which organization  
8 gave you those types of awards?

9 A Two that I remember right now is the Environmental  
10 Health Network and The Citizens Clearinghouse for Hazardous  
11 Waste. And I believe the National Wildlife Federation gave  
12 me one in about 1971.

13 Q Do you recall when the Environmental Health Network  
14 gave you an award?

15 A Two years ago.

16 Q 1992?

17 A I think that's right, yes.

18 Q And how about the Citizens Clearinghouse  
19 organization that you mentioned, when did they give you an  
20 award?

21 A Four or five years ago. In 1989, I guess.

22 Q Mr. Montague, on the list of your written work that

1 | you provided to us that we've marked as Deposition Exhibit  
2 | No. 2, I notice that there are a number of entries that refer  
3 | to your testimony before certain boards and commissions. For  
4 | example, I just had one real quick look here, on Deposition  
5 | Exhibit No. 2, Item No. 62 that appears on page 7. This is  
6 | just by way of example. The notation on No. 62 is Testimony  
7 | of Peter Montague before the subcommittee on Transportation  
8 | and Commerce, or the committee on Interstate and Foreign  
9 | Commerce, U.S. House of Representatives.

10 |           Does Montague Exhibit No. 2 contain references to  
11 | all of the occasions on which you presented testimony at  
12 | public hearings of various governmental agencies or  
13 | committees?

14 |           A     No.

15 |           Q     Can you recall some additional times that you  
16 | participated in public hearings by way of presenting  
17 | testimony that are not listed on Exhibit No. 2?

18 |           A     I know that there are additional times. Whether or  
19 | not I'm going to be able to dredge up the exact dates is  
20 | questionable.

21 |           Q     Let me limit the question then a little bit and  
22 | maybe that will help us focus in. On these additional times

1 that you're thinking about right now, do you recall whether  
2 any of that testimony related to the subject matter of  
3 dioxin?

4 A I'm sure that it did not.

5 Q It did not?

6 A It did not.

7 Q Okay. That's fine. We'll leave it at that.

8 Have you ever participated in any television  
9 programs or news reports on any environmental subjects?

10 A I don't understand the question.

11 Q Have you ever been called upon to serve on a panel  
12 for a program that would have been televised on either local  
13 or public broadcasting network, or anything of that nature?

14 A Yes.

15 Q Can you recall when?

16 A In 1988, in 1989, in 1990, and several times since  
17 then.

18 Q Okay. On any of those occasions that you've just  
19 itemized for me by date or by year date, did the topic of  
20 discussion on those programs have anything to do with dioxin?

21 A Incineration which produces dioxins.

22 Q Okay. Which of the programs discussed

1 incineration?

2 A I believe that I have discussed incineration with  
3 members of the media in all of the years that I enumerated  
4 for you.

5 Q Can you tell me what program in 1988 you  
6 participated in?

7 A I don't remember the name of the program. It was  
8 on educational television in Trenton, New Jersey, but I don't  
9 know the name of the program. It was some talk show, it was  
10 a news type talk show.

11 Q Local?

12 A Local.

13 Q Okay. How about in 1989?

14 A Same.

15 Q Same. Trenton, New Jersey?

16 A Yes.

17 Q Okay. 1990, type of program?

18 A Probably the same.

19 Q Was it actually the same program? When you say  
20 same, do you mean the same educational network or?

21 A Same educational network. There was only one  
22 television station in New Jersey. Whether or not the

1 moderator was the same individual, I don't recall.

2 Q And each of these three programs that we're  
3 discussing now, was one of the general topics of the program—

4 A Was incineration and solid waste disposal in the  
5 State of New Jersey.

6 Q How about the other programs since 1990? You said  
7 numerous others since 1990.

8 A I get a lot of calls from journalists, and I  
9 respond to them. And sometimes they tape record my words and  
10 put them on the air, or on radio, on television. I don't  
11 know how my work gets used in all cases. I have also had  
12 people bring television cameras to the office interviewing,  
13 so that I know I'm at least likely to be, likely to have my  
14 picture on television.

15 Q Do you keep a library of video tape or audio tape  
16 of any of your interviews or programs that you participated  
17 in? Do you have any of those in your possession?

18 A I don't believe I do. I don't think I have a  
19 single one. No, I do not.

20 Q Have any of the television programs or other  
21 interviews with the media that you have made reference to  
22 involved your comments upon dioxin studies? Was that one of

1 the subject matters of any of those interviews?

2 A Yes.

3 Q Can you recall generally which interviews?

4 A No.

5 Q Can you recall generally when those interviews that  
6 involved comments regarding dioxin studies occurred?

7 A They occurred subsequent to the initiation of the  
8 EPA's reassessment.

9 Q Which was when?

10 A It was initiated roughly four years ago, maybe  
11 three years ago. I'm a little vague on when EPA formally  
12 initiated their study, but the whole subject became, I got  
13 more calls after that, after that date, which is why I recall  
14 it.

15 Q Other than the teaching positions that are listed  
16 on your résumé, Mr. Montague, have you conducted seminars or  
17 conferences where you have participated as a presenter or a  
18 speaker — and let me narrow the question down — on subjects  
19 related to dioxin?

20 MR. SMOGER: Objection. Compound and ambiguous.

21 THE WITNESS: I'm not able to answer because I  
22 don't understand what your question is asking me.

1 BY MR. SCHULTEN:

2 Q Have you participated as a presenter at a seminar  
3 on the subject, on the general subject of dioxin?

4 (Witness confers with Mr. Smoger.)

5 THE WITNESS: No.

6 BY MR. SCHULTEN:

7 Q Have you participated in any conferences where you  
8 were a speaker or a panelist on the general subject of  
9 dioxin?

10 A I have been a speaker at conferences where dioxin  
11 was a topic of concern.

12 Q Okay. And could you tell me generally what  
13 conferences you're referring to and when they occurred?

14 A Well, there have been two conferences specifically  
15 on the subject of dioxin that I'm aware of that I was invited  
16 to be a speaker or presenter at. One was this summer, July  
17 or August, in St. Louis. That was the second Citizens  
18 Conference on Dioxin. And the earlier one was in the fall of  
19 1991.

20 Q Was that the first Citizens Conference on Dioxin?

21 A It was. That was in North Carolina. And I have  
22 been a presenter at other conferences as well.

1 Q What was the subject of your presentation at the  
2 second Citizens Conference on Dioxin held this past summer?

3 A I gave three or four different presentations. So  
4 there were various subjects.

5 Q Could you tell me what aspects of dioxin the three  
6 or four presentations concerned?

7 A One was inquiring of dioxin epidemiologists and  
8 other scientists whose work focuses on dioxin what they  
9 believe their ethical obligation was in relation to future  
10 generation of dioxin.

11 Q Did you prepare a paper for presenting on that  
12 topic?

13 A No. It was extemporaneous.

14 Q Was that presentation audio-recorded?

15 A Not by me.

16 MR. SMOGER: The answer is it's difficult to know  
17 who in the audience can record the seminar. He didn't plan  
18 to have any.

19 THE WITNESS: I did not record it.

20 BY MR. SCHULTEN:

21 Q You do not have in your possession an audio-tape of  
22 your presentation?

1 A I do not.

2 Q Do you know whether or not the organization that  
3 sponsored the conference audio-taped your presentation?

4 A I really don't know.

5 Q What was the organization that sponsored the  
6 conference? Is it the organization called the Citizens  
7 Conference, or is there a different organization? Let me  
8 just ask the question that way.

9 A The conference was sponsored by numerous  
10 organizations.

11 Q Was the Environmental Research Foundation one of  
12 the organizations that sponsored it?

13 A We were.

14 Q And Greenpeace?

15 A I really don't know whether Greenpeace was a co-  
16 sponsor or not.

17 Q Do you recall for the other presentations that you  
18 made this past summer what the general subject matter was of  
19 those presentations?

20 A One was a discussion with scientists and citizens  
21 about the use of risk assessment in relation to dioxin.  
22 Another presentation was about the difficulty that some

1 organizations that produce dioxins have in limiting their  
2 dioxin production because of the legal constraints that they  
3 face.

4 Q Can you recall, was there a fourth topic?

5 A That's all I can recall at the present time.

6 Q Do you recall whether or not in the course of any  
7 of the presentations that you've just described for me now,  
8 the three broad subject areas, do you recall whether or not  
9 in the course of any of those presentations you made  
10 reference to the Zack-Gaffey study?

11 A I don't recall, but I don't believe that I did.

12 Q How about in your presentation involving those  
13 companies that produce dioxin and the difficulties they have  
14 due to legal constraints and things of that nature, do you  
15 recall whether or not you made any specific reference to  
16 Monsanto Company by way of giving illustrations or examples  
17 in that presentation?

18 A I don't recall.

19 Q You may have or you—

20 A I don't recall.

21 Q Did you prepare a text, a written text for your  
22 presentation at the conference?

1           A     No, I did not.

2           Q     Do you have in your possession any notes or other  
3 written materials that either you produced or someone else  
4 produced that summarized or include any of your comments made  
5 at the second Citizens Conference on Dioxin?

6           A     I do not believe that I have any such materials in  
7 my possession.

8           Q     That's fine. Okay. Let's move on just generally  
9 to the first Citizens Conference on Dioxin. Did you serve as  
10 a presenter, participate as a presenter in that conference  
11 also?

12          A     I believe I was a moderator of a panel at that  
13 conference.

14          Q     Is that the extent of your participation in the  
15 conference?

16          A     I believe so. That was the extent of my public  
17 participation. I mean I sat through the conference.

18          Q     Oh, sure, I understand. But in a public position  
19 of presenting in any way to the—

20          A     I believe moderating one panel was the extent of my  
21 involvement.

22               MR. ROTH: What year was that?

1 MR. SCHULTEN: That was in the fall of 1991.

2 BY MR. SCHULTEN:

3 Q And do you recall the general subject matter of  
4 that panel discussion that you moderated?

5 A No, I don't.

6 Q Do you recall whether or not it had anything to do  
7 with dioxin studies, epidemiological studies of dioxin?

8 MR. SMOGER: The conference or his panel?

9 MR. SCHULTEN: The panel discussion we're just  
10 talking about, that he moderated.

11 THE WITNESS: I know there were panelists who had  
12 studied dioxin, so I--

13 MR. ROTH: Only if you know, if you can remember.

14 THE WITNESS: I really don't remember what the-- I  
15 don't remember any of this presentation specifically. I  
16 think I don't even remember all of the panelists.

17 BY MR. SCHULTEN:

18 Q And I think my question before just the general  
19 subject matter of the discussion itself. Do you have any  
20 recollection of the general subject matter of the discussion  
21 that you moderated?

22 A No, I don't think I do.

1           Q     Do you have in your possession any notes or  
2 memoranda or any documents at all, either which you produced  
3 or which someone else produced that relate to the panel  
4 discussion that you moderated at the first Citizen Conference  
5 back in the fall of 1991?

6           MR. ROTH:   If you know.

7           THE WITNESS:  We had a set of video tapes in the  
8 library at Environmental Research Foundation that purport to  
9 contain edited portions of the proceedings of that  
10 Conference.  I have never looked at them, so I don't know  
11 what's on them.  So I really don't know the answer.

12          BY MR. SCHULTEN:

13          Q     Okay.  So there's a possibility that a part of your  
14 panel discussion may be on those video tapes?

15          A     Possibly.

16          Q     You made reference, Mr. Montague, to numerous other  
17 conferences that you've participated in.  Strictly limiting  
18 those other conferences that you participated in to the  
19 subject matter of dioxin, do you have any recollection now of  
20 the dates of those other conferences that you participated in  
21 that related to dioxin besides these two Citizens  
22 Conferences?

1           A     I participated in a conference sponsored by the  
2     Environmental Health Network. I'm trying to recall when.  
3     Roughly two years ago.

4           Q     Do you recall what your participation involved?

5           A     I gave a workshop on risk assessment. And I need  
6     to talk to my lawyers about the—

7                     (Witness confers with Mr. Smoger.)

8           MR. SMOGER: At one of these private meetings that  
9     he had discussing for potential related to the lawsuit, so  
10    he's not going to go into that. It was not a presentation.

11           BY MR. SCHULTEN:

12           Q     No, no, no. And I'm not asking about private  
13    meetings. I'm asking about public presentations where—

14           MR. SMOGER: Where you were the speaker.

15           MR. SCHULTEN: Yes.

16           THE WITNESS: That risk assessment workshop was the  
17    only one. And I'm not certain that dioxin was ever  
18    mentioned, but it frequently comes up in the context of  
19    discussions of risk assessment. So it very well may have.

20           BY MR. SCHULTEN:

21           Q     Okay. Any other conferences, workshops or the like  
22    that you can recall participating in as a presenter or

1 speaker?

2 A During what time period?

3 Q Well, I don't know that we ever set a time period.

4 We talked about one occurring in 1994, one that was in the  
5 fall of '91, this Environmental Health Network that occurred  
6 in 1992. Any other ones in that time frame since 1991?

7 A I was the keynote speaker at a Labor and  
8 Environment Conference in Albany, New York.

9 Q When did that conference meet?

10 A I'm going to say 1992, but I'm not absolutely  
11 certain of that date. It might have been early '93. I'm  
12 really not sure. I think it was 1992.

13 Q Did your remarks at that conference in any way  
14 relate to dioxin exposure to employees at chemical  
15 manufacturing plants?

16 A No.

17 Q Did it relate to dioxin in general at all?

18 A I might have mentioned dioxin probably in the  
19 context of risk assessment. I can't be sure.

20 Q Did you make reference to any particular  
21 manufacturers of products whose manufacturing processes have  
22 dioxin byproducts?

1 A I believe not.

2 Q Mr. Montague, have you ever served any time in the  
3 military?

4 A No.

5 Q Have you ever been convicted of a crime?

6 A No.

7 Q Have you ever been charged with a crime?

8 MR. SMOGER: Objection. Don't answer that  
9 question. It's not relevant to anything.

10 MR. SCHULTEN: You're going to instruct the  
11 witness?

12 MR. SMOGER: I'm instructing him not to answer. If  
13 it's charges, it's not admissible unless you can give me an  
14 offer of proof as to why a charge without a conviction is  
15 admissible.

16 BY MR. SCHULTEN:

17 Q Have you ever been sued?

18 A I got a ticket for speeding once. Is that a—

19 Q That's a charge.

20 A Is that a conviction? I don't know.

21 Q It depends on whether, did you plead guilty to it?

22 MR. SMOGER: Did you pay?

1 THE WITNESS: Yes.

2 MR. SMOGER: You were convicted.

3 MR. SCHULTEN: Right.

4 THE WITNESS: I need to change my answer then.  
5 I've been convicted of—

6 MR. SMOGER: No. It's a misdemeanor.

7 MR. ROTH: It's an infraction. Cordell is the city  
8 attorney for Kirkwood, aren't you, Cordell?

9 MR. SCHULTEN: Well, my firm is. I don't serve as  
10 the city attorney.

11 THE WITNESS: I was 19 at the time. It was a while  
12 ago.

13 MR. ROTH: I think you've paid your debt to  
14 society, Peter.

15 MR. SMOGER: I would wager that all the other  
16 people in this room— or more recent than you.

17 MR. SCHULTEN: Probably so. Let me move on to my  
18 next area, since we've concluded that.

19 MR. ROTH: Why don't we take five minutes?

20 MR. SCHULTEN: Sure.

21 (A short break was taken.)

22 BY MR. SCHULTEN:

1           Q     Mr. Montague, have you ever been a party to a  
2 lawsuit before the one that you're a defendant in right now?

3                     (Witness confers with Mr. Smoger.)

4           MR. SMOGER: I want to make it clear because we've  
5 got him in two capacities. You've got Peter Montague as an  
6 individual and ERF as an organization. So has Peter Montague  
7 as an individual or ERF as an organization ever been a party  
8 to a lawsuit?

9           MR. ROTH: Have they ever sued or been sued other  
10 than in this case?

11           MR. SCHULTEN: Correct.

12           THE WITNESS: No. (Confers with Mr. Smoger.)

13           BY MR. SCHULTEN:

14           Q     The Environmental Research Foundation has not  
15 participated—

16           MR. SMOGER: He just raised something here. Was  
17 there a lawsuit involved in your divorce? Was that filed or  
18 has it been just by agreement?

19           MR. ROTH: You were divorced, weren't you?

20           THE WITNESS: Twice. Second one I'm sure there was  
21 no lawsuit.

22           MR. SMOGER: I don't think he wants that. This is

1 sort of irrelevant. But he's been divorced, so something  
2 went on, whether it was a stipulated—

3 THE WITNESS: I think I was sued for divorce by my  
4 first wife in 1970.

5 BY MR. SCHULTEN:

6 Q Would that have been Katherine Montague?

7 A No. Prior to Katherine.

8 Q What was her name?

9 A Lucia Montague.

10 Q And then Katherine Montague was your second wife?

11 A Yes.

12 Q And there was a divorce proceeding in a court?

13 A By joint agreement. There was not an adversarial  
14 proceeding.

15 Q Would that have occurred, the Katherine Montague  
16 divorce proceeding, would that have occurred in New Jersey?

17 A Yes.

18 Q How about your first wife's divorce? What state  
19 was that in?

20 A New Mexico.

21 Q Other than the divorce proceedings then, is it your  
22 testimony that you personally have not either been a

1 plaintiff in a lawsuit or you personally have not been a  
2 defendant in any lawsuit other than the lawsuit we're dealing  
3 with today? Is that correct?

4 A I believe that that is correct. I have no  
5 recollection of any other lawsuits.

6 Q And is that also correct for the Environmental  
7 Research Foundation, it's never been a representative of a  
8 class or brought any action against a governmental agency or  
9 anything like that?

10 A I believe that is correct.

11 Q And the Environmental Research Foundation has never  
12 been sued before?

13 A No, it has not.

14 Q Okay. Let's move now to, Mr. Montague, your prior--  
15 Did you have any knowledge of Dr. William Gaffey prior to  
16 writing the article that appeared in RACHEL's edition No.  
17 171?

18 MR. SMOGER: Objection. Foundation. That he had  
19 any knowledge of William Gaffey at the time he wrote it.

20 MR. SCHULTEN: Okay.

21 THE WITNESS: Would you restate the question for  
22 me?

1 BY MR. SCHULTEN:

2 Q Sure. Let's just go ahead and mark this as  
3 Deposition Exhibit No. 3.

4 (Exhibit No. 3 [Montague] was  
5 marked for identification.)

6 Our court reporter, Mr. Montague, has handed you  
7 now what has been marked as Montague Deposition Exhibit No.  
8 3. Is that a copy of "RACHEL's Hazardous Waste News" No. 171  
9 published on March 7, 1990?

10 A I believe it is.

11 Q In that document in the second column of the first  
12 page under the paragraph that has the heading "The Monsanto  
13 Case," you see the sentence that begins: "In subsequent years  
14 two Monsanto scientists, J.A. Zack and R.W. Gaffey". . . Do  
15 you see that sentence?

16 A Yes.

17 Q Did you have any knowledge of Dr. Gaffey prior to  
18 the information that you had upon which you wrote this  
19 article? Had you ever encountered Dr. Gaffey's name, had you  
20 ever spoken to Dr. Gaffey, had any knowledge of Dr. Gaffey  
21 prior to the time frame here when you wrote the article in  
22 Edition 171?

1           A     I can't be certain.

2           Q     Do you have any specific recollection as you sit  
3 here today of any knowledge of Dr. Gaffey?

4           A     No.

5           Q     Do you recall whether or not you'd ever made any  
6 statements prior to the statement that is made here in  
7 edition No. 171? Do you recall ever making any statements  
8 about Dr. Gaffey?

9           MR. SMOGER: Objection. Overbroad, vague and  
10 ambiguous as to what you mean by "statements." Are you  
11 talking about that one sentence you read?

12           MR. SCHULTEN: Well, I'm talking about that  
13 sentence and the article in general.

14           MR. ROTH: I missed the whole— Could you just  
15 restate just for my purposes.

16           BY MR. SCHULTEN:

17           Q     Sure. I'm just asking: prior to writing this  
18 article, had you ever written anything, had you personally  
19 ever written anything, Mr. Montague, that mentioned Dr.  
20 Gaffey?

21           A     No.

22           MR. SMOGER: (Speaking simultaneously.) Objection.

1 Foundation.

2 BY MR. SCHULTEN:

3 Q The answer is no?

4 A That's right.

5 Q Had you ever made any oral comments or statements  
6 mentioning Dr. Gaffey before writing the article in Edition  
7 No. 171?

8 A No.

9 Q Okay. Let's look specifically now at Edition 171,  
10 the document you have in front of you as Deposition Exhibit  
11 No. 3. Let's go back to the very first paragraph of the  
12 article and the sentence that says-- Well, I'm looking for the  
13 sentence I want to refer to and it's not there. Okay. I'm  
14 sorry. It's in the first column under the paragraph that has  
15 the heading "Background."

16 Let me just ask him some general questions before I  
17 get into the specific here. Mr. Montague, did you write this  
18 article yourself?

19 A No. 171?

20 Q No. 171, yes.

21 A I did.

22 Q Did anyone else participate in the writing of the

1 article in Edition 171?

2 A No.

3 MR. ROTH: You mean other than the quoted excerpts?

4 Is that what you mean?

5 MR. SCHULTEN: No. I'm talking about the actual

6 drafting and editing and revising of the article.

7 MR. ROTH: Okay.

8 BY MR. SCHULTEN:

9 Q Did your wife Maria review and edit it?

10 A She did not.

11 Q Did the other staff member at the time, Abigail,  
12 did she participate in typing or typesetting any of the  
13 article?

14 A She did not.

15 Q Let's go on then to the paragraph that I was  
16 referring to before. It's on the bottom of the first column  
17 on page 1 of the article under the heading "Background," the  
18 sentence that begins at the very bottom, "In fact, excess  
19 cancers have occurred," and I'm going to stop at that point  
20 of the sentence and ask this question, Mr. Montague. What  
21 information did you have at the time you wrote this article  
22 to support the statement that in fact excess cancers have

1 occurred?

2 A I had the materials that are cited in the footnotes  
3 to No. 171. In addition, I had a study by J.A. Zack and R.R.  
4 Suskind that is not cited in the footnotes. I had files  
5 containing copies of technical articles and reports and  
6 clippings from newspapers and magazines.

7 Q Okay. Let's go over each of those sources of  
8 information. Are you saying that each of those sources of  
9 information contained material that supported your statement  
10 that, "In fact, excess cancers have," and the word "have"  
11 looks to be in italics here, or in some different type of  
12 print to emphasize it, "have occurred." Are you saying all  
13 of that information supported that statement?

14 A All of the sources of information that I've  
15 described to you contributed to my belief that in fact,  
16 excess cancers have occurred.

17 Q But that is a statement of fact. You said, "In  
18 fact, excesses cancers have occurred." That's a statement of  
19 fact. Correct?

20 MR. SMOGER: Objection. The document speaks for  
21 itself.

22 MR. ROTH: And I'll object to the extent that

1 | you're calling on the witness to make a conclusion of law, a  
2 | legal determination as to what's a fact and what's an  
3 | opinion.

4 | BY MR. SCHULTEN:

5 | Q Well, it says "In fact" and excesses cancers, it's  
6 | talking about excesses cancers in the population that was the  
7 | subject of the study performed by Zack and Gaffey which is  
8 | referred to in your article.

9 | MR. SMOGER: Objection. Misstates the article. It  
10 | speaks for itself. The actual language says, "In fact,  
11 | excess cancers have occurred."

12 | MR. ROTH: I'm just going to object to the general  
13 | line of parsing like this. It has to be read in the context  
14 | of the further quote talking about exposed people being  
15 | placed in the nonexposed category and so forth. So I think  
16 | it has to be read in the larger context of what the article  
17 | actually says.

18 | MR. SMOGER: That's a different study. This  
19 | follows the paragraph talking about BASF.

20 | BY MR. SCHULTEN:

21 | Q Well, let's just ask that question then. This says  
22 | "Background," this paragraph is entitled "Background." What

1 is the background for the Zack-Gaffey study? Is it  
2 background for the Zack-Gaffey study, Mr. Montague?

3 A It's background for the main point of this  
4 newsletter.

5 Q What is the main point of the newsletter?

6 A That federal officials of two governments, the  
7 German government and the United States Government, have  
8 brought forth evidence in their official capacities that  
9 studies of people exposed to dioxin have been manipulated to  
10 make it appear that those exposed individuals were not harmed  
11 by their exposure to dioxin. That is what No. 171 is chiefly  
12 about.

13 Q So the statement, "In fact, excess cancers have  
14 occurred," does refer to the Zack-Gaffey study?

15 MR. SMOGER: Objection. Misstates his testimony.

16 BY MR. SCHULTEN:

17 Q Well, I'll ask it then. Does the statement, "In  
18 fact excess cancers have occurred," refer to the Zack-Gaffey  
19 study?

20 MR. SMOGER: Still misstates his testimony.

21 MR. SCHULTEN: I'm asking the question.

22 THE WITNESS: This statement says that excess

1 | cancers have occurred. And I don't know how else to express  
2 | it. That's what it says; that's what it meant.

3 | BY MR. SCHULTEN:

4 | Q Does it mean excess cancers have occurred in the  
5 | population study by Zack and Gaffey?

6 | MR. SMOGER: Objection as to the— that's the  
7 | definition of the population study by Zack and Gaffey. I  
8 | think the question is if the population that they didn't  
9 | study. So depends what you're talking about. In that case,  
10 | it's vague and ambiguous.

11 | MR. ROTH: Subject to that, if you can answer the  
12 | question.

13 | MR. SMOGER: Do you mean by that Monsanto?

14 | MR. SCHULTEN: No. I'm talking about the  
15 | particular study that Mr. Montague has referred to here, and  
16 | the Zack-Gaffey study that he quotes, that he makes reference  
17 | to, and I'm asking whether or not the statement, "In fact,  
18 | excess cancers have occurred," and I'll go ahead and read the  
19 | rest of this sentence: "but it appears that data have been  
20 | manipulated to hide the facts." Does that sentence refer to  
21 | the Zack-Gaffey study?

22 | MR. SMOGER: Objection. Still—

1 THE WITNESS: I believe that it refers to the  
2 workers described in the previous sentence.

3 BY MR. SCHULTEN:

4 Q Would those be workers, some of which were studied  
5 by Zack and Gaffey? That's a yes or no question.

6 A Some of the workers described in that, referred to  
7 in that sentence were studied, described or discussed in all  
8 of the documents as far as I know that were recited in No.  
9 171.

10 Q Including the Zack-Gaffey study, is that correct?

11 A Including the Zack-Gaffey study.

12 Q Okay. What excess cancers is being referred to in  
13 the sentence, "In fact, excess cancers have occurred"?

14 A All of the excess cancers.

15 Q Specifically what excess cancers?

16 A Ones that were described in the—described and  
17 discussed in the material that I told you was my source of  
18 information for No. 171 in a previous answer.

19 Q One of those items of material that were the  
20 sources that's listed in your footnotes to Edition No. 171 is  
21 a memorandum by Kate Jenkins. I'm going to ask the court  
22 reporter to mark this document as Deposition Exhibit No. 4

1 and hand that to you.

2 (Exhibit No. 4 [Montague] was marked  
3 for identification and later withdrawn.)

4 Mr. Montague, you've been handed Deposition Exhibit  
5 No. 4. Is this a copy of the memorandum that you cite in  
6 footnote 1 to Edition 171 of your newsletter?

7 MR. SMOGER: Go through it if you need to.

8 MR. SMOGER: The answer here is no.

9 THE WITNESS: I think the answer is no.

10 MR. SMOGER: We got a copy of every other page of  
11 the whole document.

12 MR. SCHULTEN: Right. Let's substitute and re-mark  
13 this one as Exhibit No. 4, and I'll withdraw that copy.  
14 (Referring to the first one marked.)

15 (Exhibit No. 4 [Montague] was  
16 marked for identification.)

17 BY MR. SCHULTEN:

18 Q Okay. Now, the Exhibit that's before you as  
19 Plaintiff's Exhibit No. 4, is that a copy of the Jenkins  
20 memorandum that's referred to in footnote 1 of your article?

21 A I think it's a copy of the Jenkins memorandum.

22 Q Now, does this memorandum contain information, the

1 Jenkins memorandum, Exhibit No. 4, contain information that  
2 you believe supports your statement that, "In fact, excess  
3 cancers have occurred"? Does it contain information that  
4 supports that?

5 MR. SMOGER: Vague, ambiguous, overbroad.

6 THE WITNESS: It contains information that  
7 contributed to my belief that cancers have increased.

8 BY MR. SCHULTEN:

9 Q Cancers have increased in dioxin-exposed workers?  
10 Is that what we're talking about?

11 A In the dioxin-exposed workers that were discussed  
12 in the first sentence of the paragraph that begins with the  
13 word "background?"

14 Q Okay. The next part of that sentence that begins,  
15 "In fact, excess cancers have occurred," continues, "but it  
16 appears that data have been manipulated to hide the facts."  
17 What data are you referring to that have been manipulated in  
18 that sentence?

19 A Data related to the studies of the workers  
20 described in the first sentence of the paragraph that begins  
21 with the word "background" in the 171.

22 Q All right. Thank you. So that would include the

1 Zack-Gaffey study. Is that correct, that is the data, or  
2 part of the data that you state has been manipulated, the  
3 data in the Zack-Gaffey study? Yes or no?

4 A Part of the data is included. Part of the data  
5 includes data that were, that formed the basis of the Zack-  
6 Gaffey study, and other studies.

7 Q And the words, "that data had been manipulated," is  
8 that sentence referring to manipulated by Zack and Gaffey in  
9 their study?

10 A It says what it says.

11 Q Well, who did you intend it to refer to? "data have  
12 been manipulated," manipulated by whom? my question is.

13 MR. SMOGER: Objection. Foundation. Assumes a  
14 fact that there is a "whom" involved. Monsanto and BASF are  
15 involved.

16 BY MR. SCHULTEN:

17 Q Well, you specifically named Zack and Gaffey as the  
18 authors of the study, and I believe later you make specific  
19 statements with respect to Zack and Gaffey. So I'm asking  
20 with respect to this sentence that includes the phrase "data  
21 have been manipulated," did you intend that to refer to the  
22 Zack and Gaffey study?

1           A     I don't know who did the manipulations that were  
2 referred to in that sentence.

3           Q     Well, would you agree with me that it would be  
4 understood that if you said "data have been manipulated," and  
5 then you refer to the Zack and Gaffey study, that it would be  
6 understood that you're saying Zack and Gaffey manipulated the  
7 data?

8           MR. SMOGER: Objection. Calls for speculation and  
9 takes the article out of context of two different paragraphs.

10          THE WITNESS: I don't understand your question.

11          BY MR. SCHULTEN:

12          Q     What is the source, what is the information that  
13 you had at the time you wrote this article that supports the  
14 statement that it appears that data have been manipulated to  
15 hide the facts? Is part of the source of that this—

16          A     All of the sources of 171 that I mentioned to you  
17 in response to a previous question contributed to my belief  
18 that is summarized in that sentence that begins, "In fact,  
19 excess cancers have occurred."

20          Q     Does the Jenkins memo that is the first cited  
21 source, Deposition Exhibit No. 4, does the Jenkins memo state  
22 that data has been manipulated?

1 MR. SMOGER: Look at the memo.

2 BY MR. SCHULTEN:

3 Q Or did you draw that conclusion from the  
4 information in the Jenkins memo?

5 MR. SMOGER: Objection. Compound.

6 BY MR. SCHULTEN:

7 Q Okay. I'll ask the first question. Does the memo  
8 state that data has been manipulated?

9 A The memo contributed to my belief that the data had  
10 been manipulated?

11 Q So that was your statement that data had been  
12 manipulated based upon the sources of information that you  
13 cite. Is that correct?

14 A Every statement in here, unless it's specifically  
15 quoted and attributed to someone else, is my statement. I  
16 wrote this article.

17 Q Right. And that's a statement of fact, that it  
18 appears that the data have been manipulated to hide the  
19 facts.

20 MR. SMOGER: Objection. Misstates. What a  
21 statement of fact is in your mind is up to your speculation.  
22 It says what it says in the article.

1 BY MR. SCHULTEN:

2 Q Do you have an answer for that question? What is  
3 your opinion? What was your intention, Mr. Montague, when  
4 you wrote that sentence?

5 A My intention was to tell my readers that official  
6 representatives of two federal governments in two separate  
7 governments had brought forth evidence that they believed  
8 showed that data had been manipulated to show that dioxin-  
9 exposed workers had not, in fact, been harmed by their  
10 exposures, when in fact they may well have been harmed by  
11 their exposures. That was the point of No. 171.

12 Q Isn't it true, Mr. Montague, that the only source  
13 of information that refers to the Zack-Gaffey study and  
14 provides a source of information that states that data has  
15 been manipulated or leads to that conclusion is the Jenkins  
16 memorandum? Isn't it the Jenkins memorandum that is the  
17 source of that?

18 MR. SMOGER: Objection. Overbroad.

19 MR. ROTH: By the Jenkins memorandum, you mean with  
20 the appended appellate brief.

21 MR. SCHULTEN: Yes. Right.

22 MR. ROTH: All forming a part of the one document?

1 MR. SCHULTEN: Yes. Right.

2 THE WITNESS: I believe that all of the studies  
3 that I have cited and the additional study of Monsanto  
4 workers that I did not cite, but which I cited to you, the  
5 study by J.A. Zack and R.R. Suskind, I believe they all  
6 contributed to my belief, including the BASF studies,  
7 contributed to my belief that "in fact, excess cancers have  
8 occurred, but it appears that the data had been manipulated  
9 to hide the facts."

10 BY MR. SCHULTEN:

11 Q Okay. Does the BASF information in the article  
12 that you cite that appeared in "The New Scientist," does that  
13 information refer to the Zack-Gaffey study by name?

14 MR. ROTH: Do you have that in front of him to show  
15 him?

16 MR. SCHULTEN: No. He cited it in here. I'm just  
17 asking his general recollection.

18 THE WITNESS: I would have to see it to give you a  
19 good answer to that question. I need to see the document.

20 MR. SCHULTEN: Okay. I don't believe that was  
21 produced to us.

22 MR. ROTH: That's a general circulation publication

1 available at any public library. I mean, it's available to  
2 you as anyone else. I don't know that it was called for in  
3 response to any request to produce or otherwise. And  
4 certainly you could have gone to the library and gotten it  
5 yourself. So.

6 MR. SCHULTEN: That's fine. Okay.

7 MR. ROTH: I just didn't want there to be an  
8 implication on the record that there was improper or—

9 MR. SCHULTEN: No, no, no.

10 MR. ROTH: —or an oversight in not giving you that  
11 piece of paper.

12 BY MR. SCHULTEN:

13 Q Right. Well, based upon the article that you've  
14 written, Mr. Montague, and the reference to the BASF study,  
15 and the citation to the article in "The New Scientist," do  
16 you have a recollection as you sit here today whether or not  
17 the article in "The New Scientist" referred to in any way the  
18 Zack-Gaffey study?

19 A I really don't know whether they referred to the  
20 Zack-Gaffey study.

21 Q Let me ask the question a little bit differently  
22 and see if we can get to the point. The only information

1 that you cite in your newsletter that specifically mentions  
2 the Zack-Gaffey study, and specifically indicates in the  
3 document that there was some possible impropriety in the  
4 conducting of the study and the handling or manipulation of  
5 the data of the Zack-Gaffey study is the Jenkins memorandum  
6 and attachments. Is that correct?

7 A Well, your question has two parts and—

8 Q Well, if you understand the two parts, you can go  
9 ahead and answer those.

10 A The first part is that Jenkins was not the only one  
11 that mentioned the Zack-Gaffey study. Zack and Gaffey  
12 certainly mentioned the Zack-Gaffey study.

13 Q And the second part of the question was?

14 A Was that the Jenkins memorandum— As I said, I don't  
15 remember what, I don't remember if the Zack and Gaffey study  
16 is mentioned at all by Friedemann Rohleder.

17 Q Here's my question, Mr. Montague. Is there any  
18 other document that you had in your possession at the time  
19 you wrote Edition No. 171 that states in the document itself  
20 that the Zack-Gaffey study manipulated data, did not properly  
21 categorize exposures to dioxin, or in any other way  
22 specifically criticize the Zack-Gaffey study?

1 MR. SMOGER: Objection. Compound.

2 MR. ROTH: And just so the record is clear on this,  
3 by that you're referring both to the memorandum prepared by  
4 Kate Jenkins, and the appellate brief by Carr and others—

5 MR. SCHULTEN: Rex Carr.

6 MR. ROTH: —in the Kemner case. Is that right?

7 MR. SCHULTEN: That's the entire document. Okay.

8 MR. ROTH: But it's two documents that form one. I  
9 don't want to create the impression that he's referred to—

10 MR. SMOGER: Let's have a stipulation that the  
11 entire document includes the attachments.

12 MR. SCHULTEN: The attachments. Right. And it  
13 says so in the memorandum.

14 MR. ROTH: All right. Well, I just didn't want to  
15 create the impression that that— that even as to that  
16 document, there are two documents that say those sorts of  
17 things.

18 BY MR. SCHULTEN:

19 Q And what I'm asking, Mr. Montague, is: Did you have  
20 in your possession any other document at the time you wrote  
21 this article that specifically stated that the Zack-Gaffey  
22 study had manipulated data, had improperly categorized

1 workers as unexposed, when they were in fact exposed, or any  
2 other criticism of the Zack-Gaffey study?

3 MR. SMOGER: If you remember or recall. It's still  
4 compound.

5 THE WITNESS: I am not certain today what my, what  
6 articles my rather extensive files on the dioxin issue, files  
7 of technical journal articles, reports, and news clippings  
8 from magazines and newspapers, I'm not sure today of  
9 everything that was in those files which I reviewed as a part  
10 of preparation for 171. So I'm not able to answer your  
11 question definitively.

12 BY MR. SCHULTEN:

13 Q Okay. I understand that. Let me ask the question  
14 this way. As a part of your regular practice in editing and  
15 writing an article, if you had some other source, a newspaper  
16 clipping, another article, some other source that agreed with  
17 the Jenkins memorandum and attachments, would it have been  
18 your practice to also cite that source as one of your  
19 footnotes?

20 MR. SMOGER: Objection. Overbroad.

21 THE WITNESS: Since I omitted a reference to one of  
22 the key studies that I had in my possession at the time that

1 I wrote this article, I would have to say that I do try to  
2 present to my readers citations to the key documents that I  
3 base my opinions and factual statements on, but that I have  
4 evidence that in this case I failed to do that. And so I  
5 have some reservations about saying that I definitively would  
6 have cited, without fail, every source of information that I  
7 might have relied upon.

8 BY MR. SCHULTEN:

9 Q Okay. But that answer is broader than my question.  
10 My question was— Well, let's back up. Let me withdraw that  
11 and ask this question. Are you suggesting then, are you  
12 testifying, is it your testimony that the Zack-Suskind study  
13 which is the one that you said you had in your possession but  
14 you didn't cite, is it your testimony that the Zack-Suskind  
15 study specifically criticizes the Zack-Gaffey study saying  
16 that it manipulated data or miscategorized?

17 MR. SMOGER: Objection. It's compound and  
18 misleading of his testimony. I think all he said was that it  
19 was something he omitted.

20 BY MR. SCHULTEN:

21 Q I understand that, but I want to clarify that. I  
22 want to know: is it your belief, is it your position, is it

1 your testimony, Mr. Montague, that the Zack-Suskind study  
2 agrees with the Jenkins memorandum and that the Zack-Suskind  
3 study actually says that the Zack-Gaffey study was wrong,  
4 that it manipulated data, came up with the wrong conclusions?

5 MR. SMOGER: Objection. Compound.

6 MR. SCHULTEN: If you understand the question you  
7 can answer it.

8 THE WITNESS: The Zack-Suskind study is an  
9 essential document for anyone who wants to answer for  
10 themselves the question: were data manipulated within the  
11 framework of the Monsanto studies? one of which was the Zack-  
12 Gaffey study.

13 BY MR. SCHULTEN:

14 Q Right. But isn't it a fact that the Zack-Suskind  
15 study occurred before the Zack-Gaffey study? Isn't that  
16 true?

17 MR. ROTH: When it was conducted or when it was  
18 published?

19 MR. SCHULTEN: Both conducted and published.

20 MR. SMOGER: Objection. Calls for speculation.  
21 Argumentative. They were conducted simultaneously.

22 BY MR. SCHULTEN:

1 Q Do you know, Mr. Montague? Do you know when the  
2 Zack-Suskind study was conducted and when the Zack-Gaffey  
3 study was conducted?

4 A I have information about that subject. I don't  
5 have first-hand personal knowledge, but I have published  
6 sources that describe when these various studies were  
7 initiated and periods during which they were conducted.

8 Q And do you know when they were published? Do you  
9 have information that provides you with the publication dates  
10 of the studies?

11 A I do.

12 Q And is it your understanding that the Zack-Suskind  
13 study was published before the Zack-Gaffey study?

14 A I believe that it was published before the Zack-  
15 Gaffey study. Nevertheless, it is an essential document for  
16 anyone wanting to understand and examine the question of  
17 whether or not data may have been manipulated to "hide the  
18 facts," to quote No. 171.

19 Q I understand you've said that before, Mr. Montague,  
20 and I appreciate that. But what I'm asking, and the question  
21 I'll go back to again is: Is there any other document that  
22 you had in your possession at the time you wrote this article

1 besides the Jenkins memorandum and attachments that  
2 specifically mentioned the Zack-Gaffey study and — I can see  
3 this is a compound question, but I believe you're capable of  
4 understanding it — and criticized the Zack-Gaffey study on  
5 the same grounds that the Jenkins memorandum and attachments  
6 criticize the Zack-Gaffey study?

7 MR. SMOGER: Objection. Compound, and asked and  
8 answered.

9 MR. SCHULTEN: If it's been answered, I'd like to  
10 know the answer to the question.

11 MR. SMOGER: He's just talked to you about his  
12 large collection of materials and he couldn't specifically  
13 remember.

14 MR. ROTH: He couldn't say definitively.

15 MR. SMOGER: And that was the response to your  
16 question.

17 BY MR. SCHULTEN:

18 Q So, as you sit here today, Mr. Montague, you  
19 believe that there may be some other document that was in  
20 existence and in your possession at the time you wrote this  
21 article in March of 1990 that specifically criticized the  
22 Zack-Gaffey study saying that Zack and Gaffey manipulated

1 data and miscategorized workers who were exposed to dioxin as  
2 unexposed? Is that your testimony?

3 MR. SMOGER: Objection. Compounds and misstates  
4 his testimony.

5 MR. ROTH: Objection as to form. You can answer  
6 it.

7 THE WITNESS: I am not able today to say  
8 definitively that I did not have in my files in early March  
9 of 1990 additional materials besides the ones that I've cited  
10 here and mentioned to you as sources of information for No.  
11 171. I'm not able to say definitively that I did not have  
12 additional materials that may well have criticized the Zack-  
13 Gaffey study.

14 BY MR. SCHULTEN:

15 Q Have you reviewed those materials recently within  
16 the last month or two in preparation for your deposition  
17 today?

18 MR. SMOGER: Objection. Vague and ambiguous. And  
19 answer only to the extent if you've reviewed something to  
20 prepare for the deposition. He's asked separate questions.  
21 So if you have reviewed materials in terms of articles to  
22 prepare for this deposition today.

1 THE WITNESS: I have not reviewed those materials  
2 for preparation for this deposition.

3 BY MR. SCHULTEN:

4 Q Okay. Have you reviewed those materials, and I'm  
5 talking about the materials that you have described as being  
6 in your possession at the time you wrote this article, have  
7 you reviewed those materials for any purpose recently within  
8 the last four to six months?

9 MR. SMOGER: Only answer that to the extent that  
10 you reviewed them, reviewed for purposes other than at the  
11 direction of your attorneys for the preparation for this  
12 litigation.

13 THE WITNESS: I have been writing about the U.S.  
14 Environmental Protection Agency's reassessment study of  
15 dioxin, the preliminary results of which were released not  
16 long ago, a month ago. In preparation for writing those  
17 articles I have reviewed my files related to dioxin, and some  
18 of the documents that are in my files now related to dioxin  
19 may well have been in my files in early March of 1990. And  
20 so I would say that it is likely that I have reviewed some of  
21 the documents that you asked about.

22 BY MR. SCHULTEN:

1           Q     Thank you. I appreciate that. Now, based upon  
2     that recent review then, can you recall as you sit here today  
3     any other article or document within your files that was  
4     published prior to March 7th of 1990 that specifically  
5     mentions the Zack-Gaffey study, criticizing it along the same  
6     lines as the criticism in the Jenkins memorandum and  
7     attachment?

8           A     I think there were two, I believe there were two  
9     articles published in the British journal "Nature," one in  
10    1985 and another in 1986 that mentioned the Zack-Gaffey work.  
11    I believe Alistair Hay was the author. That's my best  
12    recollection.

13          Q     Do you know how he spells his last name?

14          A     I think it's H-a-y.

15          Q     Okay. And both of those articles appeared in the  
16    British journal "Nature"?

17          A     "Nature," I believe that's correct.

18          Q     And do you have a specific recollection as you sit  
19    here today whether or not you had copies of those articles in  
20    your possession in March of 1990?

21          A     I do not have a specific recollection one way or  
22    the other yes or no. I don't know.

1           Q     Is it your testimony that you believe that Alistair  
2 Hay's articles that appeared in "Nature" may have mentioned  
3 the Zack-Gaffey study criticizing the conclusions of the  
4 Zack-Gaffey study saying that the studies were inaccurate?  
5 Is that what the Alistair Hay articles stated?

6           MR. SMOGER: If you can remember as best you can  
7 the articles themselves. You don't have them here, so you're  
8 not here to guess as to what they say.

9           MR. SCHULTEN: Right.

10          MR. ROTH: Do you have them to show to the witness?

11          MR. SCHULTEN: I don't. This is the first time I  
12 heard about them.

13          THE WITNESS: My best recollection is that the  
14 articles raised questions about the classification of workers  
15 put into different categories labeled exposed and not  
16 exposed, and raised other issues related to the studies—  
17 Well, it's been a long time since I've read those articles  
18 trying to extract all the points that they made. So my  
19 recollection may be somewhat flawed.

20          BY MR. SCHULTEN:

21          Q     That's fine. I appreciate that. Do you recall,  
22 you said it's been a long time since you read those articles.

1 Do you recall whether or not you read those particular  
2 articles at the time you wrote Edition No. 171 in March of  
3 1990?

4 A I looked through my files and read some of the  
5 material that was in those files in early March 1990. I  
6 don't have a specific recollection of reading or not reading  
7 Alistair Hay's work at that time.

8 Q Okay. Fair enough. Other than the sources of  
9 information that you've previously described to me as those  
10 cited on Edition No. 171, and the additional Zack-Suskind  
11 study, your file of technical articles, and newspaper  
12 clippings, other than those categories of documents, is there  
13 any other information that you had to support the statement,  
14 and there's where I was referring, the statement that appears  
15 in the very first paragraph of your article as the second  
16 sentence. "Now there is mounting evidence that such claims  
17 rely heavily on studies that are fraudulent."

18 Would your answer be the same if I asked you what  
19 information you had at the time you wrote this to support  
20 that statement?

21 MR. SMOGER: Can I hear that question back?

22 BY MR. SCHULTEN:

1           Q     I'll rephrase it. All I'm trying to find out is:  
2 if the answer is the same as what you previously said, that's  
3 fine. But if there's any other source of information that  
4 supports the statement I'm going to read, I'd like you to  
5 tell me that. The statement again in the first paragraph is  
6 "Now there is mounting evidence that such claims rely heavily  
7 on studies that are fraudulent." That's the statement. What  
8 information did you have to support that statement?

9           MR. ROTH: And you're not limiting it just to  
10 written documents. That's information from any source  
11 through any medium. Is that right?

12          MR. SCHULTEN: Sure. Yes.

13          THE WITNESS: I had been following the public  
14 health controversy, the focal point of which was dioxin and  
15 dioxin-related compounds for many years prior to 1990. From  
16 my extensive reading in the field I had concluded that there  
17 was a paradox. The paradox was that dioxin was, had been  
18 shown to be exceedingly toxic to a variety of laboratory  
19 animals and wildlife. It was toxic at levels that are  
20 measured in parts per trillion.

21          MR. SCHULTEN: Mr. Montague—

22          MR. ROTH: Let him finish. Let him finish the

1 answer if he has a—

2 MR. SMOGER: Go ahead.

3 BY MR. SCHULTEN:

4 Q I appreciate your discussion of your awareness and  
5 all, but my specific question is sources of information that  
6 support the statement that "there is mounting evidence that  
7 such claims rely heavily on studies that are fraudulent."

8 A I'm trying to answer your question.

9 Q Go ahead then.

10 A I am answering your question.

11 Q Go right ahead.

12 A One part of this paradox was that dioxin had been  
13 shown in numerous studies in a variety of vertebrates to be  
14 exceedingly toxic, one of the three most toxic substances  
15 ever tested. And yet the other side of the paradox was that  
16 studies of humans had not been able to definitively show  
17 statistically significant elevations in disease, patterns of  
18 disease in human populations. Now, there were not very many  
19 human studies, but those studies that were out there seemed  
20 not to be in accord with the animal data.

21 So that background, that paradox formed the  
22 background, background of knowledge, information,

1 preparation, understanding that I brought to the materials  
2 that I've told you were the source of this No. 171.

3 Q Okay. What is the mounting evidence that you're  
4 referring to in that statement? What specific items of  
5 evidence are you referring to as mounting evidence?

6 A All of the materials that I have told you that  
7 formed the base of information for this newsletter and my  
8 understanding that there was this paradox that remained to be  
9 resolved.

10 Q Did any particular item of documentation  
11 specifically state that the studies were fraudulent? Was  
12 that statement or conclusion contained in any one of the  
13 documents that you relied upon in writing this article?

14 A I don't know.

15 Q Does the Jenkins memorandum and attachments state  
16 that the studies were fraudulent?

17 MR. ROTH: The document speaks for itself. You can  
18 read into the record where there are excerpts that relate to  
19 that if that's what they're looking for.

20 MR. SMOGER: You can go to the title, but you can  
21 read through the whole document here.

22 THE WITNESS: Yes, I've read through it. The title

1 of the Jenkins memo, of course, does state that fraud has  
2 been newly revealed, fraud by Monsanto has been newly  
3 revealed in an epidemiological study used by EPA to assess  
4 human health effects from dioxins.

5 BY MR. SCHULTEN:

6 Q Okay. So the answer to that would be yes, this  
7 Jenkins memorandum and attachment does state that the studies  
8 were fraudulent.

9 A I believe that it does.

10 Q Okay. Now, is there any other document that  
11 specifically states that the Monsanto study, and in  
12 particular the Zack-Gaffey study, was fraudulent? Are you  
13 aware of any other document that makes that statement?

14 MR. SMOGER: Objection. Compound, vague as to  
15 time, ambiguous.

16 BY MR. SCHULTEN:

17 Q I'm limiting the time to March 1990.

18 A I have to say that I don't know, because I don't  
19 know what was in my files in early March of 1990. I simply  
20 don't recall every piece of paper that was in those files.

21 Q That's fine. And the statement where it refers to  
22 studies that are fraudulent, one of the studies that is

1 referred to there is the Zack-Gaffey study. Is that correct?

2 A One of the studies—

3 MR. ROTH: Objection as to form of the question. I  
4 think you need to read the entire— the mounting evidence that  
5 claims rely heavily on—

6 BY MR. SCHULTEN:

7 Q That such claims, meaning no evidence that dioxin  
8 causes cancer in humans, that's the claim. "There is  
9 mounting evidence that such claims rely heavily on studies  
10 that are fraudulent." My question is: Is one of the studies  
11 that is referred to in that statement the Zack-Gaffey study?  
12 Yes or no?

13 A I believe that it is.

14 Q Then another statement that appears, the second  
15 column of the first page of Edition 171 beginning the third  
16 complete paragraph under the heading "The Monsanto Case,"  
17 first sentence states: "Other studies of the same accident  
18 were also fraudulent according to the same court documents,  
19 including a study by R. R. Suskind published in the Journal  
20 of the American Medical Association." Was the source—

21 A I haven't found the place that you're—

22 Q Oh, it's right here.

1           A     Okay. "Other studies of the same accident were  
2 also"—

3           Q     Was the information that you had to support that  
4 statement the same as the information that you have testified  
5 to that supported the previous statements that we have  
6 discussed?

7           MR. SMOGER: Objection. That sentence speaks for  
8 itself.

9           MR. ROTH: Objection as to form.

10          MR. SMOGER: And it cites what it's referring to.  
11 It says "According to the same court documents."

12          BY MR. SCHULTEN:

13          Q     And what court documents are you referring to  
14 there?

15          A     The court documents attached to the EPA memo by  
16 Kate Jenkins.

17          Q     Okay. So that is the source, the court documents,  
18 the Rex Carr brief attached to the Jenkins memo, is the  
19 source of the information for that statement. Is that  
20 correct?

21          A     Yes.

22          Q     Is it your understanding that Ms. Jenkins authored

1 this memorandum in her official capacity as an employee of  
2 the EPA, that this was an official EPA document? Is that  
3 your understanding?

4 A That is my understanding.

5 Q Okay. Do you have any knowledge as to whether or  
6 not Ms. Jenkins was instructed to prepare this memorandum by  
7 one of her superiors at the EPA? Was she given the duty or  
8 the task of preparing this memorandum? Do you have any  
9 knowledge of that?

10 MR. ROTH: Just so the record— Go ahead.

11 MR. SMOGER: I'm going to object to any knowledge  
12 he might have acquired subsequently through counsel. To the  
13 extent, I mean if your question relates to knowledge as of  
14 the time of writing—

15 MR. SCHULTEN: Or knowledge that he obtained from  
16 Kate Jenkins or any other source other than your counsel.

17 MR. SMOGER: If you obtained knowledge other than  
18 at the request of counsel to acquire information pursuant to  
19 this litigation, or from counsel, you can answer the  
20 question. So you have to cut it out, anything to do with  
21 this litigation.

22 THE WITNESS: During what time period?

1 MR. ROTH: Yes. With that in mind, maybe you want  
2 to divide things up generally as we did when we ran into this  
3 problem last time of March 1990 and before, then post-1990,  
4 and it may be easier to--

5 BY MR. SCHULTEN:

6 Q Okay. Let's do it this way. When did you receive  
7 the Jenkins memorandum, Deposition Exhibit No. 4?

8 A I received two copies of it on different days. I  
9 don't know precisely the day, but I would say a week to ten  
10 days prior to March 7th.

11 Q Okay. A week to ten days prior to March the 7th.  
12 Is that correct?

13 A I believe that that's when it arrived at our  
14 office.

15 Q Okay. And one of the sources of the memorandum was  
16 from Margo Blackwell at People against the Incinerator. Is  
17 that correct?

18 A Yes.

19 Q And the other copy came from William-- is it  
20 Sanjour?

21 A Sanjour, yes.

22 Q Who is an EPA official here in Washington, D.C.?

1           A     That's correct.

2           Q     Did Mr. Sanjour have any cover letter or  
3 handwritten note or any sort of notation explaining what this  
4 memorandum was when he sent it to you? The question is: did  
5 he just send you the memo, or did he write a little note with  
6 it, if he wrote a little note?

7           A     I don't have a specific recollection of a note  
8 attached to this memo, but when Mr. Sanjour mails materials  
9 to me, he typically attaches a cover note that's rather  
10 brief, saying something like "FYI Bill," or "FYI Bill  
11 Sanjour," or "You should read this, Bill Sanjour."

12          Q     All right. Did you have any conversation with Mr.  
13 Sanjour concerning the Jenkins memorandum after you received  
14 it in the mail?

15               MR. SMOGER: Objection. Vague as to time.

16               MR. SCHULTEN: And after he received it in the  
17 mail.

18               MR. ROTH: Anytime after? After he received it,  
19 before—

20               MR. SMOGER: (Speaking simultaneously.) Until the  
21 time—

22               BY MR. SCHULTEN:

1           Q     Right.  Until you published the article on March  
2 the 7th.  So within that ten-day period did you call Bill on  
3 the phone and say thanks for sending me the EPA memorandum?

4           A     No, I did not.

5           Q     Did you have any conversation with him whatsoever  
6 during that ten-day period?

7           A     None whatsoever.

8           Q     Okay.  Since that time have you had any  
9 conversation with Mr. Sanjour in which he has stated to you  
10 anything about the Kate Jenkins memorandum, Exhibit No. 4?

11          A     I've had numerous conversations with Mr. Sanjour  
12 that touched upon this memo in one way or another.

13          Q     Did he ever, in those numerous conversations about  
14 the memorandum, did he ever tell you whether or not Kate  
15 Jenkins authored this memorandum as one of her official  
16 duties at the EPA?

17          A     Yes, he did.

18          Q     What did he say?

19          A     He told me at length about litigation between, and  
20 provided me with documents about litigation between Kate  
21 Jenkins and her supervisors at EPA.  And he clearly showed  
22 that, he clearly convinced me that it was an official

1 document.

2 Q That was after you authored, after you published  
3 Edition No. 171. Is that correct?

4 A Yes.

5 Q What litigation did he tell you about?

6 A I don't know the details.

7 MR. SMOGER: To the extent— You know, you've gone  
8 into something. To the extent— You've had a lot of attorneys  
9 who have asked you to do research during the course of this.  
10 If assignments have occurred as a result of discussions that  
11 attorneys have asked you to do, then I don't want you to  
12 discuss those.

13 THE WITNESS: All right.

14 MR. SMOGER: And if you happened to talk to  
15 somebody, and it's not related to the preparation of your  
16 defense in this case, you can talk about it. But if it's  
17 been related in some to ask you, then don't. (sic.)

18 BY MR. SCHULTEN:

19 Q Did Mr. Sanjour provide you with documents from  
20 this litigation that you've described between Kate Jenkins  
21 and her EPA supervisors that related to her authoring the  
22 February 23rd, 1990 memo?

1           A     On advice of my counsel I'm not going to answer  
2     that question.

3           MR. SCHULTEN:   Are you instructing him not to  
4     answer that question?

5           MR. SMOGER:   To the extent that whatever he got was  
6     related to a request of counsel, then I am.   If it's  
7     something that he got anyway.   I mean, I also have a question  
8     of relevance of anything that happened subsequent to the  
9     March 7th date.

10          THE WITNESS:   Let me ask you a question.

11          (Witness confers with Mr. Smoger.   Short break was  
12     taken.)

13          BY MR. SCHULTEN:

14          Q     Back on the record.   Prior to our break, Mr.  
15     Montague, I was asking a question regarding whether or not  
16     Mr. Sanjour provided you with any documents that had to do  
17     with whether or not Kate Jenkins' memorandum was a memorandum  
18     that was authored in her official capacity as an employee of  
19     the EPA.   And I believe your response was that you were not  
20     going to answer that question on the advice of your counsel.  
21     Is that correct?

22          A     That's my answer.

1           MR. SCHULTEN: And could I have a clear statement  
2 on the record what the grounds for instructing the witness  
3 not to answer are?

4           MR. SMOGER: I said, and I can say this, there are  
5 various assignments he's been given or given by various  
6 attorneys, and some of those assignments included research  
7 related to this lawsuit. And if he got something as a result  
8 of the assignment from an attorney in this lawsuit, or if he  
9 got something that's recent, then not to answer that. If he  
10 acquired something from Sanjour in another capacity that's  
11 not related to this lawsuit, then he can. Also I had a  
12 separate question of relevances. All of this took place  
13 subsequent to the March 7th writing, and to the extent he  
14 received anything before notification of the lawsuit, he  
15 certainly should talk about that, and certainly he should  
16 talk about anything you received before you wrote this  
17 article.

18           MR. ROTH: I just would like to add to that, for my  
19 own part: Mr. Smoger is representing the witness in his  
20 individual capacity, that is the plaintiff wants to make a  
21 document request, I mean there may be a distinction between  
22 inquiring of the witness of things that he did or may not

1 have done because some of them may have been in response to  
2 requests by counsel which in turn would reveal strategy in  
3 the case and so forth.

4 MR. SCHULTEN: I understand.

5 MR. ROTH: But if a document request was tendered  
6 and there's still time for you to do that, we would respond,  
7 you know, in some fashion, depending on what it said. So I  
8 don't know that the particular instruction to the witness  
9 limits your ability to find out information that you may want  
10 to find out. So I just wanted to add that statement to the  
11 record.

12 MR. SCHULTEN: I just want to understand your basis  
13 of your instruction to the witness not to answer is based  
14 upon relevancy and that his conduct, his actions, would be  
15 workproduct essentially?

16 MR. SMOGER: Yes.

17 MR. ROTH: And would really be integral to the  
18 attorney/client privilege.

19 MR. SMOGER: If that's the basis. I mean if  
20 there's an offer of proof as to how this, any of this would  
21 relate. So I think you haven't established before March 7th.

22 MR. SCHULTEN: Right. Well, let's ask the question

1 so the record is clear. You're instructing him not to  
2 answer, and let me ask this question then.

3 BY MR. SCHULTEN:

4 Q Do you have in your possession then, Mr. Montague,  
5 documents that you believe support your affirmative, one of  
6 your affirmative defenses in this case that has been pleaded  
7 in your answer that the statements in Edition No. 171 are  
8 reports on judicial or other official proceedings? Do you  
9 have documents that you believe support, that provide a  
10 factual support for that position?

11 MR. ROTH: I'm going to object to the extent that  
12 you're calling on the witness to make a legal determination  
13 as to what particular documents may or may not support that  
14 affirmative defense. As you know, these are legal defenses,  
15 and these are judgments that are made by counsel based on a  
16 variety of information. I don't think it's fair to call on  
17 the witness to the extent the witness may have learned those  
18 particular things. You can ask him about documents that he  
19 may have in his possession that relate to particular subject  
20 matters, but tying it to the particular affirmative defense I  
21 think calls on the witness to make a legal judgment.

22 So I mean, I invite you, there are areas of inquiry

1 that I think would— But you can ask him if he has things on  
2 certain topics. But to say that they relate specifically to  
3 the affirmative defense, or the language of the affirmative  
4 defense, I think invades the attorney/client privilege. So  
5 it calls on the witness to render a legal conclusion.

6 MR. SCHULTEN: Okay. I believe that Rule 11 does  
7 require that factual inquiry be made before a pleading is  
8 filed. And so what I am asking is: Does Mr. Montague have in  
9 his possession documents that support his position that Ms.  
10 Jenkins' February 23rd, 1990 memorandum, marked as Exhibit 4,  
11 is an official EPA document? Do you have other documents in  
12 your possession that support that position?

13 MR. SMOGER: Objection. Still calls for a legal  
14 conclusion by your saying "other." Do you mean other  
15 documents than this document which is on EPA letterhead?

16 MR. SCHULTEN: Yes.

17 MR. ROTH: That's signed by an employee of the EPA  
18 that was sent to the witness by another official at the EPA,  
19 other than that—

20 MR. SCHULTEN: Yes.

21 MR. ROTH: —are you asking whether there are other  
22 facts or things known to the witness that support his view

1 that this memorandum is part of the official duties of Kate  
2 Jenkins? Is that it in essence?

3 MR. SCHULTEN: Yes. Which he's already testified  
4 to. He's testified that he believes that this was done in  
5 her official capacity.

6 BY MR. SCHULTEN:

7 Q So I'm asking him, is there, do you have other,  
8 specifically other documents that support your testimony that  
9 this memorandum by Kate Jenkins was prepared in her official  
10 capacity?

11 A I think that I do.

12 Q What are those documents?

13 MR. SMOGER: Don't guess or speculate.

14 THE WITNESS: The best I can do is say I think I  
15 have documents that indicate that this was an official action  
16 by Kate Jenkins. This memorandum was an official action by  
17 Kate Jenkins, but—

18 MR. SMOGER: Well, without guessing or speculating,  
19 there are specific docu—

20 THE WITNESS: I can't describe them. I can't  
21 describe those documents to you, but I think I have documents  
22 that relate that.

1 BY MR. SCHULTEN:

2 Q Are they documents from the EPA?

3 MR. SMOGER: Let me say, if there are documents  
4 that he has, we will look at them either way, and if they say  
5 it's not, or if it is, then we'll look at them. But I don't  
6 know that these documents have any relationship to this. The  
7 question is if the witness here is speculating on what  
8 certain documents might mean.

9 MR. ROTH: It's hardly fair to ask the witness in  
10 his mind to picture what documents he may or may not have  
11 back at his office. I mean that's what we're here for. If  
12 you want to make a request for production on a particular  
13 subject, we'll evaluate. I mean, if he can answer the  
14 question, he can. I mean, if he knows of specific documents  
15 as he sits here today. But I don't think you can call on the  
16 witness to speculate as to what he may or may not have  
17 without having the opportunity to look back. I mean, you did  
18 not make any kind of document request that he bring things  
19 with him to this deposition. He doesn't have anything with  
20 him at this deposition, and as you know, it's not a memory  
21 contest. But subject to that.

22 MR. SCHULTEN: No. I understand all that. I

1 understand all that, and I'm simply asking, and I believe the  
2 witness has already testified that he believes he does have  
3 other documents.

4 BY MR. SCHULTEN:

5 Q Correct?

6 A I believe I do.

7 Q Okay. My next question is: Are those other  
8 documents that were produced that were authored by the EPA?

9 A I don't know who the authors of the documents were.

10 Q Let me ask the question this way. Do you believe  
11 that one or more of those other documents is a document by an  
12 EPA official that specifically states that the Kate Jenkins  
13 memorandum, Exhibit 4, was authored, was written in her  
14 official capacity? Do any of those other documents  
15 specifically state that?

16 MR. ROTH: If you know.

17 (The witness confers with Mr. Smoger.)

18 MR. ROTH: Again, I don't think it's fair in the  
19 absence of the documents in front of the witness.

20 MR. SCHULTEN: I'm just asking if he recalls. If  
21 he doesn't recall, he can say he doesn't recall.

22 MR. SMOGER: No. You're going to send us a

1 document request because he's gotten stuck— You know, you're  
2 asking general stuff. He's received stuff through me and  
3 through other attorneys, and he's not able to distinguish  
4 that at that time as to what it is. And so a lot of this  
5 comes under workproduct. Now, if you send the document  
6 request that's appropriate, we'll respond to that, but we're  
7 really fluctuating in an area that's post the initiation of  
8 this litigation and has to do with the defense of this  
9 litigation.

10 MR. SCHULTEN: Well, it's very relevant to a  
11 pleaded defense in that it is my understanding that it is Mr.  
12 Montague's position, and he's been repeating it over and over  
13 again, that this article was an article based upon official  
14 proceedings, official EPA documents of the United States  
15 Government. And I'm simply asking that if he has something  
16 in his possession—

17 MR. SMOGER: If he has documents, you can send a  
18 request for the documents. His description of what those  
19 documents say is not going to be testimony there's other  
20 documents without the documents in front of you. So why  
21 don't you request the documents? We'll look and see what it  
22 is that he's talking about. But my suspicion now is that we

1 might be talking about documents that were actually sent to  
2 me. And in that case they're attorney workproduct.

3 MR. SCHULTEN: Well, then I would not expect to see  
4 them in this litigation then.

5 MR. SMOGER: Well, that's what I'm trying to find  
6 out.

7 MR. SCHULTEN: If I'm not going to see those  
8 documents at trial—

9 MR. SMOGER: Well, that's why we say, send the  
10 request, and we'll make the determination of the request.

11 MR. SCHULTEN: Okay.

12 MR. SMOGER: But right now I think we're talking  
13 about stuff that's hard for him to distinguish as to what  
14 he's got.

15 MR. ROTH: Let me just also add to the record,  
16 because maybe I can— I mean, we're trying to, I'm trying to,  
17 we're trying to cooperate as best we can and get you the  
18 information you need without waiving any kind of  
19 attorney/client or workproduct protection. And that's kind  
20 of a dicey proposition. You have to err on the side of  
21 conservatism.

22 But with that in mind, there's really two things to

1 keep in mind. One is the EPA element of it; the other is the  
2 Kemner brief which is part of an official government  
3 proceeding and so forth.

4 MR. SCHULTEN: I understand that.

5 MR. ROTH: Well, let me just finish. If you want  
6 to, if you want to make a request now on the record, we will  
7 treat it as a request.

8 MR. SMOGER: Well, no, send the request. Send the  
9 request.

10 MR. ROTH: Well, it doesn't really—

11 MR. SMOGER: Send the request.

12 MR. SCHULTEN: Well, I will follow up and send the  
13 request, but just on the record, what it was is, I want all  
14 documents that refer to or relate or in any way evidence the  
15 capacity in which Kate Jenkins authored her February 23rd,  
16 1990 memorandum, including any written authorization from a  
17 superior at the EPA to perform the investigation that  
18 resulted in the memorandum, or to do any other task that  
19 resulted in her writing the memorandum.

20 So, basically what I'm looking for is any document  
21 that supports the proposition, supports your proposition that  
22 Kate Jenkins' memorandum was authored in her official

1 capacity at the EPA because I don't think EPA takes that  
2 position.

3 MR. ROTH: Well, I will tell you that we will  
4 endeavor to start looking into that, and we will await your  
5 written document request so that we can get a prompt answer  
6 to you within the confines of the Rules of Civil Procedure.  
7 But also we will direct the same request at you, since you  
8 evidently have some belief or some basis in which you're  
9 allowing to us that--

10 MR. SCHULTEN: I can tell you right now on the  
11 record that when we served Kate Jenkins with a subpoena, the  
12 EPA attorneys indicated that she would not testify, she would  
13 appear but would not testify because the EPA believed that,  
14 No. 1, it would not be in EPA's best interest for her to  
15 testify under some Code of Federal Regulations, which I'm  
16 sure you're well familiar with.

17 And also the attorney for the EPA stated that they  
18 did not believe that this memorandum was authored in her  
19 official capacity.

20 MR. ROTH: Was that told to you orally or in  
21 writing?

22 MR. SCHULTEN: It was told to me in a conference

1 that I participated in.

2 MR. ROTH: With somebody from the EPA?

3 MR. SCHULTEN: With an attorney from the EPA.

4 MR. ROTH: All right. Well, we'll direct the same  
5 inquiry to you, and if you have any sort of writing that  
6 confirms that, we'd like to see that as well. So maybe we  
7 can just move on with that in mind.

8 BY MR. SCHULTEN:

9 Q The last statement in your article, Edition No.  
10 171, Mr. Montague, appears in the second column, the second  
11 paragraph under the heading, "The Monsanto Case." The  
12 paragraph that said "according to court documents attached to  
13 the EPA memo," quote, "Zack and Gaffey deliberately and  
14 knowingly omitted five deaths from the exposed group, and  
15 took four workers who had been exposed and put these workers  
16 in the unexposed group, serving of course to decrease the  
17 death rate in the exposed group and increase the death rate  
18 in the unexposed group."

19 My question with respect to that statement, Mr.  
20 Montague, is: are the court documents that are referred to  
21 there the excerpts from the Rex Carr brief that are attached  
22 to the Jenkins memorandum in Exhibit No. 4? Is that what you

1     meant by "court documents"?

2             A     Yes.

3             MR. ROTH: Just for the record there's more than  
4     one attorney listed there. There's Rex Carr and others, and  
5     a Mr. Leonetti and others.

6             MR. SCHULTEN: Right. Rex Carr is the first named  
7     attorney on the brief.

8             MR. ROTH: Okay.

9             MR. SCHULTEN: I'm just in shorthand referring to  
10    it as the Rex Carr brief.

11            MR. ROTH: Okay.

12            BY MR. SCHULTEN:

13            Q     Was there any other information that supported that  
14    statement that I've just read besides the court documents in  
15    Exhibit No. 4?

16            MR. SMOGER: Objection. Vague and ambiguous. The  
17    statement is a quote.

18            MR. SCHULTEN: Right.

19            MR. SMOGER: So when you say does this exact quote  
20    appear anywhere else, is that what you're asking?

21            BY MR. SCHULTEN:

22            Q     That's a good question. Does that quote appear

1 anywhere else to your knowledge besides in the brief and in  
2 your newsletter?

3 A During what time period?

4 Q Prior to March 7, 1990.

5 MR. ROTH: Does it appear in the memo itself? You  
6 may want to look at that again. Paraphrased perhaps.

7 BY MR. SCHULTEN:

8 Q Maybe to shortcut this: Are you referring to, Mr.  
9 Montague, if you want to take a look on page 3 of the Jenkins  
10 memorandum, the first complete paragraph that begins with "An  
11 earlier predecessor study performed by Zack was alleged to  
12 have deliberately and knowingly omitted five deaths," et  
13 cetera. Is that the reference?

14 A I believe that the quotation that I put into No.  
15 171 and the reference on page 3 of the Jenkins memo are  
16 referring to the same five deaths and the same four workers.

17 Q Is it referring to the same study? Is the Zack-  
18 Gaffey study referred to in your article 171 the same as the  
19 predecessor study performed by Dr. Zack that Ms. Jenkins  
20 refers to?

21 MR. SMOGER: You're calling for him to speculate as  
22 to his understanding.

1 BY MR. SCHULTEN:

2 Q Yes. What is your understanding? Is it your  
3 understanding that the predecessor study performed by Dr.  
4 Zack is the same as the Zack-Gaffey study?

5 A It's my understanding that it did not precede, but  
6 they are referring to the same study.

7 Q Okay. And the quote, going back to the attachment,  
8 the actual brief that's attached, does that quote appear — if  
9 you want to take a look at the page, what's numbered as 27 to  
10 the attachment, if you look back a little bit more than half  
11 way down the middle of the page, I believe the sentence  
12 begins: "However, Zack and Gaffey"— do you see that?

13 A (Nods.)

14 Q Is that where you took your quotation?

15 A Yes.

16 Q You've already testified, Mr. Montague, as to where  
17 you received the Jenkins memo, the two people that sent you  
18 copies of it. Can you tell me, if you recall as you sit here  
19 today, where did you get your copy of the Zack-Gaffey study  
20 itself that you footnote as Footnote No. 4?

21 A I got it from the Library of Science and Medicine  
22 at Rutgers University in New Brunswick, New Jersey.

1 Q And when did you obtain that copy of the study from  
2 that library?

3 A A few days before March 7th, 1990.

4 Q And in preparation for writing this article, did  
5 you read the entire Zack-Gaffey study?

6 A I believe that I did.

7 Q But you don't have a specific recollection as you  
8 sit here today that you did in fact read the entire article  
9 before you—

10 MR. ROTH: He just said he believed he did.

11 MR. SCHULTEN: Well, I want to know what he means  
12 by he believed that he did.

13 BY MR. SCHULTEN:

14 Q Yes, you did or—

15 A I think that I did. I'm not certain of anything  
16 five years ago, but I believe that I read the entire article.

17 Q And did you obtain a copy of the Suskind-Hertzberg  
18 study from the same library at the same time?

19 A Yes.

20 Q Did you have in your possession a copy of the Zack-  
21 Gaffey study at any time prior to early March 1990, if you  
22 can recall as you sit here today?

1 MR. ROTH: You mean prior to when he retrieved a  
2 copy of the—

3 MR. SCHULTEN: From the library, yes, that he just  
4 testified to. Had he ever had a copy of it before that time,  
5 since it was published, I believe, in 1980.

6 MR. ROTH: Go ahead.

7 THE WITNESS: I'm quite sure I did not have a copy  
8 of the published Zack-Gaffey study prior to early March 1990.

9 BY MR. SCHULTEN:

10 Q How about the Zack-Suskind study that you've  
11 previously referred to, but is not one of the footnoted  
12 sources on your article, when did you obtain a copy of the  
13 Zack-Suskind study?

14 A At the same time that I acquired the copy of the  
15 Suskind-Hertzberg study and the copy of the Zack-Gaffey  
16 study.

17 Q From the same library?

18 A From the same library.

19 Q Okay. Did you speak to anyone, have any  
20 conversations with anyone prior to March 7th, 1990 and after,  
21 let's say from the point of time when you received the  
22 Jenkins memorandum, Exhibit No. 4, to the time you published

1 the Edition 171 on March the 7th of 1990, did you talk to  
2 anyone regarding any of the statements? Well, let's just say  
3 this, regarding your article, the content of your article  
4 that you were about to publish.

5 A I have no specific recollection of talking to  
6 anyone about the article.

7 Q How about did you talk to anyone about the Jenkins  
8 memorandum? I believe you already testified that you didn't  
9 call Bill Sanjour. Did you call or talk to anybody else?  
10 Margo Blackwell, or anyone else concerning the Kate Jenkins  
11 memorandum?

12 MR. ROTH: Same period of time, from the time of  
13 receipt until the time of publication?

14 MR. SCHULTEN: Correct.

15 THE WITNESS: I believe that I did not.

16 BY MR. SCHULTEN:

17 Q Mr. Montague, is it your testimony that the  
18 statement, quote, "In fact, excess cancers have occurred but  
19 it appears that the data have been manipulated to hide the  
20 facts," is it your testimony that that is a true statement?

21 A I believe it is a true statement.

22 Q And is it your testimony that the statement, quote,

1 "Now there is mounting evidence that such claims rely heavily  
2 on studies that are fraudulent," closed quote, that that  
3 statement is in fact a true statement?

4 A I believe that it is a true statement.

5 Q How about the statement, quote, "Other studies of  
6 this same accident were also fraudulent," is it your  
7 testimony that that statement, in fact, is a true statement?

8 MR. ROTH: Let me just interject here.

9 MR. SMOGER: That's taken out of context, and I'm  
10 going to object to that. Don't answer that. If he wants to  
11 read you the whole sentence and put it in context, you can  
12 answer it.

13 MR. ROTH: And correct me if I'm wrong, I think  
14 that you are asking these in the context in which they were  
15 written, in the context of this entire article.

16 MR. SCHULTEN: Right. And the reason why I just  
17 pared that out is because we specifically pleaded that that  
18 is one of the defamatory statements, but I'll be happy to—

19 MR. SMOGER: We understand that, but it happens  
20 that that particular one as against the others, says  
21 "according to the same court documents," so it's true that  
22 according to the same court documents that statement is true.

1 And that's the way that statement's written.

2 BY MR. SCHULTEN:

3 Q I understand that. So let me ask this question  
4 then. Is it your testimony that based upon those court  
5 documents the statement, "Other studies of this same accident  
6 were also fraudulent"—

7 MR. ROTH: Well, that's not what it said. It says  
8 "according to."

9 BY MR. SCHULTEN:

10 Q Well, I'm asking him. Let me finish my question.  
11 I want to know what your testimony is regarding that. Do you  
12 believe that that statement that "Other studies of this  
13 accident were also fraudulent," that that statement in and of  
14 itself is true? Is that your testimony?

15 MR. SMOGER: Outside of the context of this entire  
16 article.

17 MR. SCHULTEN: No. Based upon the sources of  
18 information that he's already identified. But I want to know  
19 what his testimony is. Is he saying that that's true, or is  
20 he saying that that's not true?

21 MR. SMOGER: Well, the difficulty is you're here to  
22 talk about this article and whether it defamed somebody, and

1 it has to be taken in context. If you're asking him whether  
2 he thinks the study is fraudulent outside the context of this  
3 article, you can ask him that.

4 If you're going to ask him what's true in this  
5 article, then give him the statement as it's written in the  
6 article.

7 BY MR. SCHULTEN:

8 Q I'm asking him what — I think he's already  
9 testified that it's true that the court documents make the  
10 statement that other studies were fraudulent. I believe  
11 you've already testified to that, and we've looked at the  
12 brief that's attached to the Jenkins memorandum.

13 Now my question is: Is it your testimony that other  
14 studies of this same accident were also fraudulent, that that  
15 statement is a true statement?

16 MR. SMOGER: Objection. Compound.

17 THE WITNESS: True that other studies of this same  
18 accident were also fraudulent according to the same court  
19 documents. I believe that the sentence that I wrote here,  
20 which is a rather long sentence, is a true— I believe what I  
21 wrote is true.

22 BY MR. SCHULTEN:

1           Q     I understand that you're testifying that it is true  
2     that the court documents say that the other studies are  
3     fraudulent. Okay? Can we have that understanding? I  
4     understand that. I'm asking you another question. The other  
5     question is: Do you believe that the statement "Other studies  
6     of this same accident were also fraudulent" is in fact a true  
7     statement?

8           MR. SMOGER: And you're asking that outside the  
9     context of this article. Are you asking his own belief as he  
10    sits here today whether he personally believes that the  
11    studies were fraudulent?

12          MR. SCHULTEN: Well, what I'm trying to separate is  
13    what I believe you have, what I believe the witness has  
14    previously testified to, that it's true that the court  
15    documents say other studies are fraudulent. I understand  
16    that. I'm going beyond that. And my question is: Is it your  
17    testimony that other studies of this accident were  
18    fraudulent, is that statement in fact a true statement? Is  
19    it your testimony that it was true, that it is true, that  
20    that statement is true?

21          MR. SMOGER: I'm just objecting to your predicate  
22    because your predicate is stating that it says something that

1 it does not say. Now, if you want to go outside of this  
2 article, you can certainly ask him whether it's his own  
3 personal belief that those are fraudulent, and he can give  
4 you that testimony. But if the predicate is this article,  
5 you're asking him to say something the article doesn't say.  
6 So I'm objecting to the question.

7 BY MR. SCHULTEN:

8 Q So let me ask the question this way then. Is it  
9 the extent of your testimony, Mr. Montague, that the  
10 statement "Other studies of this same accident were also  
11 fraudulent," according to the same court documents, is true  
12 because the same court documents say "Other studies of this  
13 same accident were also fraudulent"? Is that the basis upon  
14 which you are testifying that the statement is true?

15 MR. SMOGER: Objection. Vague, ambiguous and  
16 argumentative.

17 (The witness confers with Mr. Smoger.)

18 THE WITNESS: I believe that what I wrote was true.

19 BY MR. SCHULTEN:

20 Q Does that mean it was true because other documents  
21 made this statement? Is that what's true about it, that  
22 you're saying that the other studies were fraudulent because

1 the court documents said so, and that's what's true?

2 A I believe that what I wrote was true.

3 Q And is it your testimony then that "Other studies  
4 of this same accident were also fraudulent"?

5 MR. SMOGER: Are you asking for his personal  
6 belief?

7 MR. SCHULTEN: I'm asking for his testimony today,  
8 yes.

9 BY MR. SCHULTEN:

10 Q Is it your testimony that that statement—

11 MR. SMOGER: Well, his testimony is anything he  
12 says. Are you asking does he personally believe that?

13 MR. ROTH: Are you asking him did he have reason to  
14 think that it was—

15 MR. SMOGER: You have different questions, but if  
16 you want to go outside this document, you can certainly ask  
17 what his beliefs are regarding these studies.

18 MR. ROTH: See, that's the perils of using just—

19 MR. SCHULTEN: Well, okay, I appreciate all the  
20 help you're giving me. If you're stating an objection, go  
21 ahead and state an objection.

22 MR. ROTH: I'm just saying you're using a part of

1 something that's in a document. He's told you what he— that  
2 he believes that what he wrote is true. Now, if you want to  
3 ask him in the abstract a question, whether he has reason to  
4 believe that something was not true, if he does today. I  
5 mean it's just impossible to place it in context of what  
6 you're looking for.

7 BY MR. SCHULTEN:

8 Q Okay. Let me just ask the question this way then.  
9 Is it your belief, is it your position today that the other  
10 studies that are referred to in your article that you wrote,  
11 other studies of this same accident, were also fraudulent, is  
12 it your testimony, outside the context of this article, is it  
13 your testimony that that statement is in fact true?

14 MR. ROTH: Just so the record is clear, the other  
15 studies you are referring to are.

16 MR. SCHULTEN: Well, I think we've talked about  
17 that before. Do you have the question in mind? Are you  
18 still thinking about it or?

19 THE WITNESS: I'm thinking about it.

20 I believe that there is evidence indicating that  
21 the specific study that's mentioned in this paragraph which  
22 was published in the Journal of the American Medical

1 Association—

2 BY MR. SCHULTEN:

3 Q What about that study?

4 A I'm working on it here. —was very likely deceptive  
5 and misleading. However, I have not personally looked into  
6 that study in sufficient depth for me to say today that I am—  
7 that I have personally evaluated and have concluded that it  
8 is fraudulent.

9 Q Okay. Have you personally looked into and  
10 evaluated the Zack-Gaffey study so that you can testify today  
11 as to whether or not you personally believe that the Zack-  
12 Gaffey study was fraudulent?

13 A I have.

14 Q And what is your testimony with respect to the  
15 Zack-Gaffey study?

16 MR. ROTH: What do you mean, what is your testimony  
17 with respect?

18 BY MR. SCHULTEN:

19 Q Well, is it your statement that the Zack-Gaffey  
20 study was fraudulent? Is that your testimony?

21 MR. ROTH: I'm going to object. And so there's no  
22 misunderstanding as to what the witness and what you think of

1 as fraud, you know he may want to—

2 MR. SCHULTEN: He's used the term already in his  
3 answer.

4 MR. ROTH: Right. So you're asking him as he  
5 understands the term fraud—

6 MR. SCHULTEN: Right.

7 MR. ROTH: —is the Zack-Gaffey study fraudulent?  
8 Is that in essence your question?

9 MR. SCHULTEN: Well, I think my question was has he  
10 personally evaluated it and reviewed it to the degree that  
11 you've just described this other study, and you've qualified  
12 it and said you don't think you've done it enough with  
13 respect to the subsequent Suskind study that appeared in the  
14 Journal of the American Medical Association, so you don't  
15 have a statement with respect to that.

16 BY MR. SCHULTEN:

17 Q But I'm asking you: Have you gone through that  
18 process of personally evaluating and reviewing to come to a  
19 conclusion about the statements that you have made concerning  
20 the Zack-Gaffey study?

21 MR. ROTH: I'm going to object to your preamble to  
22 the extent it characterizes prior testimony as to the article

1 in the Journal of the American Medical Association. Subject  
2 to that, if you can understand the question, answer it.

3 THE WITNESS: I have evaluated the Zack and Gaffey  
4 study and other information about the population of workers  
5 who were the subject of the Zack and Gaffey study  
6 sufficiently for me to be personally convinced that the Zack  
7 and Gaffey study was deceptive and misleading to such an  
8 extent that I would have to call it fraudulent.

9 BY MR. SCHULTEN:

10 Q Okay. And is it your testimony that the statement,  
11 quote, "Gaffey deliberately and knowingly omitted five deaths  
12 from the exposed group and took four other workers who had  
13 been exposed and put these workers in the unexposed group,  
14 serving of course to decrease the death rate in the exposed  
15 group and increase the death rate in the unexposed group," is  
16 it your testimony that that statement in fact is true?

17 MR. SMOGER: Objection. Don't answer the question.  
18 If you want to read the whole sentence, he'll answer the  
19 whole sentence, but not out of context.

20 BY MR. SCHULTEN:

21 Q Well, let me withdraw that question then and ask  
22 the question this way. Is it your position, is it your

1 testimony that the statement that I've just read concerning  
2 the Zack and Gaffey study is a true statement? Let me ask it  
3 this way to try to avoid all the problems that we've  
4 encountered before.

5           What did you do, Mr. Montague, to independently  
6 evaluate the information that was provided in the Jenkins  
7 memoranda and attachments to determine whether or not the  
8 statements contained in the Jenkins memoranda and attachments  
9 were true? What did you do to evaluate and determine that  
10 they were true?

11           A     I read the materials I've described to you when you  
12 asked me what were the sources of No. 171. I evaluated those  
13 materials based upon my years of experience as a historian  
14 and a journalist. I thought about the information that I had  
15 found in my reading within the framework of the paradox that  
16 I've described to you earlier about dioxin.

17           Q     Right.

18           A     And I applied logic and care to the analysis, and I  
19 became convinced that what I wrote here was true and is true.

20           Q     Okay. And did you become convinced that the  
21 statement that "Zack and Gaffey deliberately and knowingly  
22 omitted five deaths from the exposed group, and took four

1 workers who had been exposed and put those workers in an  
2 unexposed group, serving of course to decrease the death rate  
3 in the exposed group and increase the death rate in the  
4 unexposed group," did you come to the conclusion through this  
5 process that you've just described for me that that  
6 statement, in and of itself, is true?

7 A There's one portion of that statement—

8 MR. SMOGER: I was going to object as to time.

9 THE WITNESS: I'm sorry.

10 BY MR. SCHULTEN:

11 Q At the time you wrote the article.

12 MR. ROTH: Oh, now you didn't distinguish as to—  
13 but go ahead.

14 MR. SCHULTEN: Well, he described his whole process  
15 that he went through. And I'm saying through that process.

16 MR. ROTH: Go ahead.

17 BY MR. SCHULTEN:

18 Q Did you come to the conclusion that that statement  
19 was true?

20 A As I told Mr. Gaffey in a letter, or perhaps I told  
21 Mr. Gaffey's attorney in a letter — I'm not sure which — I am  
22 not sure about the number five, five deaths. I have very

1 good evidence that the true number is larger than zero, and  
2 very likely smaller than 20 or 21 or 22. What the true  
3 number is I'm still not sure. I'm hoping we can learn that  
4 during this litigation.

5 All the other aspects of that statement I believe  
6 are provably true.

7 Q What caused you to hesitate about the number five?  
8 What causes you to hesitate about that?

9 A Because there are various documents that I have  
10 read that give different numbers for the number of deaths  
11 that were omitted from the Zack and Gaffey study.

12 Q What are those various documents?

13 A Documents that I referred to earlier. The report  
14 that appeared in "Nature" in 1985 or 1986 authored by  
15 Alistair Hay who offers a number around 20.

16 MR. SMOGER: To the extent you received documents  
17 in your office, or consultants you've had by attorneys or  
18 attorneys have given you reports, that's not what he means by  
19 documents. The Hay document is a published record. So you  
20 have to be careful about what analysis you're talking about.  
21 I assume that this is all afterwards.

22 THE WITNESS: This is all afterwards. I thought I

1 was being asked my opinion today here now.

2 MR. ROTH: That's right.

3 BY MR. SCHULTEN:

4 Q Okay. You said you went through, when you got the  
5 Jenkins memorandum, I believe I understand you to testify  
6 that when you got the Jenkins memorandum and you read it,  
7 that you evaluated it in the context of the other documents  
8 that you have enumerated as being sources of information.

9 A Yes.

10 Q And you evaluated the Jenkins memorandum and  
11 attachments in the context of your growing body of knowledge  
12 that you've accumulated in this paradox of the incidences of  
13 cancer in laboratory test animals, and no incidence of, or  
14 low incidence of cancer in humans exposed to dioxin. That  
15 paradox which you're aware of, that you evaluated the Jenkins  
16 memorandum, within that big, broad context, and that you at  
17 the time you wrote the article, did you come to the  
18 conclusion, based upon that analysis that you've described  
19 for me?

20 A I'm sorry. I was answering the wrong question. I  
21 thought you were asking me right here and now today what is  
22 my belief about the truth of that statement. I did not

1 understand that you were asking me about my understanding of  
2 that statement—

3 Q At the time you wrote it.

4 A --on March 7th in 1990, or March 5th of 1990.

5 Q I'm glad you clarified that. I am asking you about  
6 your knowledge at the time you wrote the article. I'm asking  
7 you, I believe the question I asked that started this whole  
8 line of discussion was: What did you do to verify the  
9 validity of the statements that were contained in the Jenkins  
10 memorandum and attachments before you published Edition No.  
11 171?

12 MR. ROTH: What made them reliable?

13 MR. SCHULTEN: Well, I asked him what did he do. I  
14 want to know what he did, if anything, to verify the  
15 statements contained in here before you wrote the article.

16 THE WITNESS: Well, I read the materials that I've  
17 described to you as the sources of No. 171.

18 MR. SCHULTEN: Okay.

19 THE WITNESS: And I analyzed that information and  
20 brought to bear on it my understanding of the general paradox  
21 that I've described to you, and I asked myself, are these  
22 credible documents, and did they come to me from credible

1 sources? And are they logical? Are they internally  
2 consistent? Do they make sense? Are they on the face of it  
3 reasonable? And I concluded that they were on the face of it  
4 reasonable documents making a reasonable case. And I  
5 concluded that I had no reason to doubt them.

6 Q And did you conclude that the statements that were  
7 contained in them were true statements?

8 A I had no reason to believe that the statements  
9 contained in them were not true.

10 Q Okay. So yes, or no, did you conclude that they  
11 were true statements?

12 MR. SMOGER: Objection. Asked and answered.

13 MR. ROTH: Yes. I think he's answered your  
14 question. He told you the context of the articles.

15 THE WITNESS: I had no reason to believe that this  
16 material was not true.

17 BY MR. SCHULTEN:

18 Q So when you wrote No. 171 and published it March  
19 7th, 1990, you weren't just communicating by this newsletter  
20 that an EPA memorandum says this about the Zack-Gaffey study;  
21 you intended to communicate that the Zack-Gaffey study was in  
22 fact fraudulent. Was that your intent?

1 MR. SMOGER: Objection. Misstates his prior  
2 testimony of the last three hours.

3 MR. ROTH: And it's argumentative.

4 MR. SMOGER: He said what he's trying to  
5 communicate long ago.

6 THE WITNESS: I was communicating that federal  
7 officials in two federal governments had said in official  
8 documents that they had evidence of fraud in several studies  
9 of dioxin-exposed humans, and that the fraudulent nature of  
10 those documents was that the data within them had been  
11 manipulated for the purpose of making it appear that the  
12 exposed humans had not been harmed, when in fact it was very  
13 likely that they may have been harmed.

14 That was the story. And that was my intention, to  
15 tell my readers that officials in two federal governments  
16 were making those statements.

17 BY MR. SCHULTEN:

18 Q Have you ever met Kate Jenkins personally?

19 A I have.

20 Q When was the first time you met her?

21 A Sometime in 1991. Probably fall of 1991, maybe  
22 late summer.

1 Q Prior to your receipt of this memorandum authored  
2 by Kate Jenkins, had you ever spoken with Kate Jenkins? Did  
3 you know her?

4 A I don't think that I did know her. I have no  
5 recollection of having ever talked to Kate Jenkins before I  
6 wrote No. 171.

7 Q And did you make an attempt to contact Kate Jenkins  
8 after you received the memorandum about ten days prior to  
9 March the 7th, 1990?

10 A I did not.

11 Q Since meeting Kate Jenkins in 1991 can you tell me  
12 on how many occasions that you have met with her personally?

13 MR. SMOGER: Somewhat misstates. It's not clear  
14 from the question if you were with counsel or for purposes of  
15 litigation, then it's not relevant to discuss, particularly  
16 since you never talked to her before or met her before this.

17 THE WITNESS: What's your question?

18 BY MR. SCHULTEN:

19 Q What was the occasion in 1991 when you met Kate  
20 Jenkins?

21 A I visited her in her office at EPA.

22 Q Was anyone else present at that time?

1           A     I don't think so.

2           Q     And what did you say to Kate Jenkins during that  
3 visit?

4           MR. SMOGER: First, were you seeing her at the  
5 request of one of your counsel or for purposes of litigation  
6 regarding this article?

7           THE WITNESS: I had multiple purposes in seeing  
8 her. One, of course, was that I had been sued by Mr. Gaffey  
9 at that point, and I wanted to acquire documents from her  
10 that I thought she might have.

11          BY MR. SCHULTEN:

12          Q     Were you asked to do that? Was that pursuant to  
13 specific instruction from your attorneys at that time? Or  
14 was that your own decision to go and see Ms. Jenkins?

15          A     It was my own decision to go and see her.

16          Q     What did you say to her at that time?

17          A     I asked her if she had documents that she could  
18 make copies of for me related to agent orange.

19          Q     Did you get any documents from her regarding agent  
20 orange?

21          A     I think that I did, but I'd be hard pressed to tell  
22 you which ones because I have a lot of documents on agent

1 orange, and I don't mark them as to their source, so I feel  
2 that I came away from that meeting with a few copies of a few  
3 documents, but I'm going to disappoint you if you want  
4 specifics because I don't think I have them.

5 Q Any documents relating to her February 23rd, 1990  
6 memorandum, Exhibit No. 4?

7 A I don't think that I did.

8 Q Did you ask her whether or not she would be willing  
9 to testify in this case?

10 A I don't think that I did.

11 Q Did Ms. Jenkins make any statements to you at that  
12 time regarding her February 23rd, 1990 memorandum, Exhibit  
13 No. 4?

14 A I don't recall. I don't recall the details of the  
15 conversation, except that my purpose was to ask her for  
16 documents. And I think she gave me some, and the  
17 conversation that occurred around that I really don't know  
18 the details. It was a casual meeting.

19 Q Did that occur approximately September-October  
20 1991?

21 A That's approximately the right time, yes.

22 Q Shortly after you were served with the complaint?

1           A     You know, within a few weeks or a couple months  
2 after that occurred, yes.

3           Q     Okay. And since that meeting in the fall of 1991,  
4 have you had other face-to-face meetings at which just you  
5 and Kate Jenkins were present and no attorneys were present?

6           MR. SMOGER: Don't discuss the meetings if the  
7 attorney asked you to conduct the meeting.

8           THE WITNESS: I don't understand the question.

9           BY MR. SCHULTEN:

10          Q     Did you have any other meetings with Kate Jenkins  
11 after the fall of 1991 at which—

12          A     I think I was sitting in someone's office in EPA,  
13 and I think Kate Jenkins came into the office, and in that  
14 sense we had a meeting.

15          Q     You met her face-to-face.

16          A     We had five or ten words face-to-face, and then I  
17 believe she left.

18          Q     Whose office were you in at that time?

19          A     I think it was William Sanjour's office.

20          Q     Is he in the same building, or was he at that time  
21 in the same building as Kate Jenkins?

22          A     Well, if they were in the same office

1 simultaneously, they were certainly in the same building.

2 Q Was her office also located in that same building?

3 A That I don't know.

4 Q Do you recall the occasion, what prompted Ms.  
5 Jenkins to come in to Mr. Sanjour's office while you were  
6 there?

7 A No, I don't. It was business between her and him,  
8 and I didn't understand it, I didn't pay attention to it.

9 Q Does Mr. Sanjour, did he at that time work with Ms.  
10 Jenkins?

11 A I do not know.

12 Q Do you know whether or not you belong to any of the  
13 organizations that you belong to— Let me rephrase the  
14 question.

15 Do you know whether or not Ms. Jenkins belongs to  
16 any other organizations that you also belong to?

17 A I do not know.

18 Q Do you know whether or not Ms. Jenkins attended  
19 either the first or second citizens conference on dioxin?

20 A I do not know.

21 Q Do you know whether or not Ms. Jenkins has attended  
22 any other conferences, workshops or seminars that you've

1 participated in since September 1991?

2 A I don't know that. I just don't know.

3 Q You don't recall ever seeing her at a conference or  
4 seminar, anything like that?

5 A I may have seen her at the first citizens dioxin  
6 conference, but I'm not sure about that. That would be the  
7 only time that I might have seen her at a conference that I  
8 was at that I can recollect at the present time.

9 Q And that was the one held in North Carolina in  
10 1991?

11 A Yes.

12 Q Would that have been before or after your meeting  
13 with Ms. Jenkins at her office in about September of 1991?

14 A I don't know that. I just don't know.

15 Q Do you recall any other occasions where you came  
16 into contact with Ms. Jenkins, spoke with her face-to-face?  
17 I'm not talking about telephone conferences or things of that  
18 nature. I'm just talking about face-to-face meetings at  
19 which attorneys were not present.

20 MR. SMOGER: Or was not at the direction of  
21 attorneys.

22 THE WITNESS: The only face-to-face meetings that I

1 can remember at the present time are the ones that I've  
2 described to you already.

3 BY MR. SCHULTEN:

4 Q Fine. That's good. How about telephone  
5 conversations with Ms. Jenkins?

6 MR. SMOGER: To the extent that an attorney had  
7 that or asked you to make the call, don't discuss that, but  
8 if it's a conversation you had as to other activities, then  
9 you can discuss that.

10 BY MR. SCHULTEN:

11 Q Why don't I rephrase the question and make it more  
12 specific. Do you recall any telephone conversations with Ms.  
13 Jenkins where Ms. Jenkins telephoned you?

14 A Yes.

15 Q Okay. What were those occasions?

16 MR. SMOGER: Again, if she's calling you back  
17 because you initiated a call related to your case, then  
18 that's— I think he's asking for when she on her own initiated  
19 something, when it was just to call you, but not where she  
20 was calling you back or she was calling about your case.

21 (Witness confers with counsel outside the room and  
22 returns.)

1 BY MR. SCHULTEN:

2 Q Let's press on here. I believe we had a question  
3 pending, Mr. Montague, concerning telephone conversations  
4 that Ms. Jenkins initiated to you. And I think you said you  
5 do recall those and I asked you—

6 A On several occasions between the time I first met  
7 her and now I have received phone calls from Kate Jenkins  
8 about a variety of matters.

9 Q Did she call you last week when she was served with  
10 a subpoena in this case?

11 A She did not call me when she was served with a  
12 subpoena in this case.

13 Q Did she call you at any time last week?

14 MR. SMOGER: Don't. If it's something to do with  
15 litigation, I missed that because I was looking at this, but,  
16 you know.

17 THE WITNESS: She called my office trying to reach  
18 Mr. Smoger.

19 MR. SCHULTEN: Oh, okay.

20 THE WITNESS: She did not call me.

21 BY MR. SCHULTEN:

22 Q Do you have a general idea of approximately how

1 many times Ms. Jenkins' has telephoned you, say, within the  
2 last year?

3 A Two or three times in the last year.

4 Q Okay. Within the last three years would it be  
5 approximately two or three times each year or so?

6 A That would make a total of--

7 Q About nine or ten?

8 A No. I have not talked to Kate Jenkins anywhere  
9 near nine or ten times in the last year. I have talked to  
10 her maybe four or five times in the last three years.

11 Q You said she has called you on a variety of  
12 matters. Has she ever called you to get information and  
13 answer from you on a particular project that she was working  
14 on for the EPA where she called you with a question saying  
15 could you give me some information about this particular  
16 topic?

17 A There were various things that she would call me  
18 about. She would call me to ask me if I knew some document  
19 related to the dioxin reassessment had yet been made public.  
20 She would ask me if I was planning to testify at some public  
21 hearing on dioxin that EPA was conducting. You know, just  
22 seemingly unimportant matters.

1           She would call to tell me about what she considered  
2     some milestone or other in her litigation over her treatment  
3     by her supervisor at EPA. Typically short conversations.

4           Q     Has Ms. Jenkins ever talked to you and told you  
5     what her belief is as to whether or not she was acting in her  
6     official capacity as an employee of the EPA when she authored  
7     the February 23rd, 1990 memorandum, Exhibit No. 4?

8           A     She has told me that all EPA employees, if they  
9     receive information that they believe indicates waste, fraud  
10    or abuse, that they are obligated under federal law to report  
11    that to people above them in the chain of command, and that  
12    she believes that she was doing that. She believes she was  
13    obligated as a federal employee to write the memo that she  
14    wrote, and she believes that it was her official duty and  
15    that she did it as an official action. As an EPA employee  
16    she did it on EPA time.

17          Q     Did she ever tell you that she was given specific  
18    authorization to conduct the review of the brief in the  
19    Kemner case, and that she was directed to review that brief  
20    and to prepare a memorandum evaluating that brief? Did she  
21    ever tell you that?

22          A     I don't think she's ever told me that.

1 Q Did she tell you where she got the Kemner brief?

2 A I don't think she's told me that. I've never asked  
3 her.

4 Q So as she ever told you what prompted her to write  
5 the memo, other than the fact that she came into possession  
6 of this?

7 A She told me that she felt obligated under federal  
8 law to write the memo. And once she became aware that there  
9 was evidence of waste, fraud or abuse, she had an obligation  
10 to pass that information up the chain of command.

11 Q Had you ever received a copy of the brief filed on  
12 behalf of the plaintiffs, the Kemner plaintiffs, before you  
13 received it as a part of the attachment to the Jenkins  
14 memorandum?

15 A I believe the answer is no. I don't think I  
16 received it prior to receiving it attached to—

17 MR. ROTH: Off the record.

18 (Discussion off the record.)

19 BY MR. SCHULTEN:

20 Q Did you obtain copies of any other legal briefs or  
21 trial transcripts from the Kemner case before you received  
22 the Jenkins memorandum in early 1990?

1           A     I'm sorry. Would you just state the question  
2 again.

3           Q     Sure. I'd be glad to.

4                     Before you received the Jenkins memorandum, had you  
5 received and did you have in your possession any other legal  
6 documents from the Kemner-versus-Monsanto lawsuit?

7           A     I don't think that I did.

8           Q     So did you learn about the brief in the Kemner  
9 lawsuit for the first time when you received it as part of  
10 the attachments to the Jenkins memorandum? Is that the first  
11 time you learned about it?

12          A     Among the many documents that I reviewed for No.  
13 171 there were newspaper articles that described various  
14 aspects of the Kemner litigation. Since all litigation has  
15 briefs as part of it, I knew of the existence as a general  
16 matter of briefs in this litigation as I would know that  
17 there were briefs in any litigation. But I had never  
18 actually, as far as I know, ever actually had my hands on any  
19 copy of any portion of the brief.

20                     MR. SCHULTEN: Okay. If you know, he's referred to  
21 a file of newspaper articles. Several newspaper articles  
22 were produced as a part of the production of documents. Do

1 | you know whether or not those are the newspaper articles that  
2 | Mr. Montague is referring to?

3 |           MR. ROTH: I don't know. I'll take it up  
4 | afterwards. If that production was made by Evans and Dixon—

5 |           MR. SMOGER: Neither of us were involved at the  
6 | time of that production.

7 |           MR. ROTH: But I'll look at it and I'll get an  
8 | answer to you.

9 |           MR. SCHULTEN: Right. Because if there are other  
10 | newspaper articles that he had in his possession at that  
11 | time, he's described a file of newspaper articles—

12 |           MR. ROTH: Well, I think he's described a topical  
13 | file that contains scientific articles, reports, you know,  
14 | medical journals and newspaper clippings, all combined, that  
15 | he keeps on issues of dioxin and so forth. I will look at  
16 | your document request again. I will look at what we  
17 | produced, and I will look at what he has and—

18 |           MR. SMOGER: I don't think there's any way of doing  
19 | that at this point.

20 |           MR. ROTH: Oh, whether you had it before or after?

21 |           THE WITNESS: I don't know when I acquired it  
22 | because I—

1 MR. SMOGER: (Speaking simultaneously.) —came  
2 afterwards and they came as part of this litigation.

3 THE WITNESS: An occasional document might for some  
4 reason be dated as to when I acquired it, but as a general  
5 matter, the documents that I acquire are not dated at the  
6 time that I acquire them.

7 MR. ROTH: I think we'll just have to assume that  
8 Evans and Dixon and Greensfeld have faithfully executed their  
9 obligations under the Rules providing discovery.

10 MR. SCHULTEN: Okay. Well, then, and this will be  
11 last question for this evening then is:

12 BY MR. SCHULTEN:

13 Q To the best of your recollection, Mr. Montague, as  
14 you sit here today, do you believe that the first time you  
15 became aware of the contents of the brief in the Kemner  
16 litigation which specifically criticized the Zack-Gaffey  
17 study was when you received the Jenkins memorandum with  
18 attachments? Is that your best recollection today, that the  
19 time you became aware of it was when you received this memo?

20 A I believe that the Hay articles from "Nature" that  
21 I've described earlier, or referred to earlier, which I may  
22 have had in my files in early March of 1990, I believe that

1 | they refer to the Kemner transcript as sources of  
2 | information.

3 | MR. SCHULTEN: Okay. Well, we can look those up.

4 | THE WITNESS: I never had the Kemner transcript in  
5 | my possession.

6 | MR. SMOGER: This is the Kemner appellate brief.

7 | MR. SCHULTEN: Right. And I was just going to, for  
8 | the sake of the next—

9 | MR. SMOGER: Just to be clear, he's asking about  
10 | the appellate brief which was written—

11 | THE WITNESS: Oh, I thought you were asking about  
12 | the entire transcript of the Kemner litigation.

13 | MR. SCHULTEN: My last question was specifically  
14 | with reference to this brief which contains specific  
15 | criticisms of the Zack-Gaffey study, and there is on the  
16 | document that was produced there is—

17 | THE WITNESS: I can answer your question now that I  
18 | understand it.

19 | BY MR. SCHULTEN:

20 | Q Okay. What is the answer?

21 | A I did not have— This is the first document that I  
22 | have seen, this is the first document that I had ever seen

1 that was an appellate brief in the Kemner case that  
2 criticized the Zack and Gaffey study.

3 MR. ROTH: By "this document" you are referring to  
4 the part of the excerpt from the brief that's attached to the  
5 Jenkins memorandum, Exhibit 4.

6 THE WITNESS: That's correct.

7 MR. SCHULTEN: Okay. Let's conclude at this time  
8 for this evening and then resume at 9:30 tomorrow morning.

9 MR. ROTH: Very good.

10 THE WITNESS: Thank you.

11 (Whereupon, at 5:40 o'clock p.m., the deposition  
12 was adjourned till 9:30 a.m., October 21, 1994.)

13 \* \* \*

UNITED STATES OF AMERICA)  
DISTRICT OF COLUMBIA )

I, Margaret Sue Foster, the officer before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn by me; that the testimony of said witness was taken by me by Stenomask and thereafter reduced to typewriting by me; that said deposition is a true record of the testimony given by said witness; that I am neither counsel for, related to nor employed by any of the parties to the action in which this deposition was taken; and, further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, or financially or otherwise interested in the outcome of this action.

  
Margaret Sue Foster,

Notary Public in and for the  
District of Columbia

My Commission expires:  
July 31, 1996