

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

FRANCES E. KEMNER, ET AL.,)
Plaintiffs,)

vs.) Case No. 80-L-970

MONSANTO COMPANY,)
Defendant.)

REPORT OF PROCEEDINGS

March 21, 1986

Before the HONORABLE RICHARD P. GOLDENHERSH, CIRCUIT JUDGE

APPEARANCES:

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

MR. KENNETH HEINEMAN, MR. JOSEPH NASSIF, and MR.

JAMES C. CRAVEN, Attorneys at Law, on Behalf of
the Defendant, Monsanto Company.

Kathleen Watson Brunsmann

Official Court Reporter

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1 BE IT REMEMBERED AND CERTIFIED, that heretofore on
2 to-wit, Friday, March 21, 1986 the matter as hereinbefore
3 set forth came on for hearing before the Honorable Richard
4 P. Goldenhersh, Circuit Judge, in and for the Twentieth
5 Judicial Circuit, and the following was had of record, to-
6 wit:

7
8 DR. RAYMOND SUSKIND,
9 having previously been sworn upon his oath,
10 testified further as follows:

11
12 FURTHER CROSS EXAMINATION

13 BY MR. CARR:

14 Q Tammy, would you give the witness Exhibit 1779.
15 Dr. Suskind, the clerk has given you Plaintiffs' 1779 again,
16 which if you recall is the group exhibit of Dr. Nestmann's
17 reports, and I think we had finished Mr. Haney, and the next
18 one in that group is Mr. Hollis Martin. Would you turn to
19 that page, please. It's 8348450 on the bottom, right-hand
20 corner.

21 A Yes, I have it before me.

22 Q Mr. Martin has chief complaints of pain in the
23 back of the legs and the feet, and that his nerves are -- I
24 can't make that out -- shakey? Yes, it's repeated down in

1 the first paragraph there. Is that correct, sir?

2 A Yes, it looks like shakey, sir.

3 Q And his trouble started some three, four years
4 ago. The pain, he says, may be so severe that it will make
5 him fall down, does it not, sir? You see that right in the
6 bottom of the first paragraph?

7 A Yes, sir, I see that, sir.

8 Q Doctor, that kind of pain that would be severe
9 enough to cause somebody to fall down would be quite severe,
10 would it not? Have a pain in your leg --

11 A It could be, sir, yes.

12 Q Well, it would be, would it not? Pain in your
13 legs so bad that you couldn't stand up.

14 A I assume that that's correct, sir.

15 Q And, Doctor, he also reported that, I assume, when
16 that occurs it takes about an hour for the pain in his legs
17 to disappear.

18 A This is what the report reads of his complaints,
19 sir, yes.

20 Q He's been having that problem as of that time for
21 three or four years, according to his statement, sir.

22 A Well, that's in the first sentence. "His trouble
23 started three or four years ago." The pain started in the
24 back of his leg, yes.

1 Q Doctor, this complaint of pain now that these men
2 have had here in 1955 and, of course, the same complaint of
3 pain, at least many of the ones that we went through here,
4 and that you saw in '79, these are all consistent symptoms,
5 aren't they, sir?

6 A Some of them do have pain, sir, yes, sir.

7 Q My question is, sir, these are all consistent
8 symptoms, aren't they, sir?

9 A They sound like they're the same symptoms.

10 Q My question is, sir, they are all consistent
11 symptoms, aren't they, sir?

12 A I don't know what you mean by consistent, sir.

13 Q Doctor, why didn't you say that before you gave me
14 all these various unresponsive answers. Consistent means
15 jive with one another, or the same, or not contradictory, go
16 along the same way. You know what consistent means.

17 A No, I'm not altogether sure in this case that they
18 are consistent, sir.

19 Q Now, you do know what consistent means then, sir,
20 don't you, sir?

21 A Well, if you define it for me, I know what it
22 means, sir.

23 Q Doctor, you know what it means. You're older than
24 I am, I'm sure you've used it many more times than I.

1 You're well read, an educated man. Everyone knows what
2 consistent means. You're starting out this morning the same
3 way. Doctor, are these pains in your judgment, the symptoms
4 that they've had from '49 to '50, to '55, and up through
5 '79, are they the same kind of complaint?

6 A They are pain, sir, so that would make them the
7 same --

8 Q My question, sir, are they the same kind of
9 complaint, sir?

10 A It would appear that they are described similarly,
11 yes.

12 Q Is that a yes to my question, Doctor?

13 A But I'm not sure about the consistency.

14 Q Doctor, is that a yes to my question? You keep
15 adding these things, then you say yes. When we read this
16 record to you a week from now, or a month from now, you'll
17 say that I was just answering yes to that part that I said,
18 not yes to your question. So you understand why I insist
19 upon an answer to my question. Doctor, are these the same
20 kind of complaints, sir?

21 A I don't know, sir.

22 Q You don't know, sir?

23 A No, I do not know.

24 Q Have they each complained of pains in their legs?

1 A They have complained of pains in the legs, yes,
2 sir.

3 Q Have they each complained of those pains in the
4 legs, sir?

5 A Yes, sir.

6 Q Therefore, are they the same complaints -- kind of
7 complaints, sir, if each have made the same complaint,
8 they're the same kind of complaint, aren't they, sir?

9 A They are the same kinds of complaints, sir, but
10 I'm not sure that they are the same kinds of pain, sir.

11 Q Doctor, I didn't ask you that, did I?

12 A I thought you were, sir. That would mean
13 consistent. Then they would be consistent.

14 Q I said these symptoms are consistent, are they
15 not, sir, and you have --

16 A I said I didn't know, sir.

17 Q Doctor, if they are the same complaints, they are
18 consistent if they're the same, aren't they, sir?

19 A If they are the same kinds of pain.

20 Q If they are the same complaints, the complaints
21 are consistent, aren't they, sir?

22 A The complaints may be the same, but the pain may
23 not be consistent, sir.

24 Q Doctor, I'm asking you, if you'll listen to my

1 question, the complaints are consistent, aren't they, sir?

2 A I do not know, sir.

3 Q Doctor, are they making the same complaints?

4 A They are making the same kinds of complaints, yes.

5 Q And if they're making the same kinds of
6 complaints, they are consistent, aren't they, sir?

7 A I do not know, sir.

8 Q Doctor, doesn't -- isn't a complaint that's the
9 same as another complaint consistent with it?

10 A No, sir.

11 Q It isn't?

12 A No.

13 Q How do you define consistent, Doctor?

14 A If they are the same kind --

15 Q How do you define consistent, Doctor?

16 A My definition in this instance of consistent --

17 Q Not in this instance. In the world in general how
18 do you define the word consistent?

19 MR. HEINEMAN: Objection, interrupted the answer,
20 your Honor.

21 THE COURT: Objection is overruled.

22 THE WITNESS: They are alike in quality and
23 quantity.

24 Q (By Mr. Carr) And, Doctor, these -- alike means

1 A Yes, sir, I believe he is, sir.

2 Q Doctor, his reflexes, he has the hyperactive knee
3 and ankle jerk, but the normally active biceps and triceps
4 jerks on the deep tendon reflex test; isn't that correct,
5 sir?

6 A That's correct, sir.

7 Q His abdominals and cremasteric, whatever that is
8 -- what is a cremasteric reflex, Doctor?

9 A It's the reflex when you stroke the jaw area.

10 Q And that's one plus, and his abdominals are one
11 plus.

12 A Right.

13 Q Doctor, he too has been given a diagnosis by Dr.
14 Nestmann that he has a moderately severe psychoneurosis;
15 isn't that correct, sir?

16 A That's one of the diagnoses, sir, yes.

17 Q And again Mr. Wright's -- Dr. Nestmann's diagnosis
18 with respect to Mr. Wright was omitted from the report that
19 was submitted to the Workmen's Compensation Commission, was
20 it not, sir?

21 A No, sir.

22 Q Does the compensation report contain the diagnosis
23 moderately severe psychoneurosis?

24 A In this particular report --

1 Q Excuse me, Doctor, would you answer the question?

2 A There is no diagnosis, sir.

3 Q Would you answer my question, sir?

4 A No, in this particular report there is no
5 diagnosis, sir.

6 Q Would you read the question that I asked the
7 witness?

8
9 (Question read.)

10
11 THE WITNESS: This report does not, sir.

12 Q (By Mr. Carr) Is your answer with respect to the
13 report that was submitted to the Workmen's Compensation
14 Commission, Dr. Suskind?

15 A This report, sir.

16 Q Doctor, your use of the word "this," because one
17 can't see what you're pointing to, this report, you're
18 pointing to the report that was submitted to the Workmen's
19 Compensation Commission, are you not, sir?

20 A I am only referring to the report that you have
21 given me which you have said were the reports submitted to
22 the Workmen's Compensation. But I don't know that they're
23 the only reports that were submitted.

24 Q Doctor, did you understand that the Judge is the

1 judge of whether or not this is submitted to the Workmen's
2 Compensation Commission, and that he has ruled and held that
3 it is a report that was submitted to the Workmen's
4 Compensaion Commission?

5 A It is, sir.

6 Q Do you understand that you may not overrule the
7 Judge, Dr. Suskind, that you are obligated --

8 MR. HEINEMAN: Your Honor, I object to this. Your
9 Honor, I object to this.

10 THE COURT: Gentlemen, wait a second. Let's
11 approach the bench.

12
13 (The following proceedings were had at the bench
14 out of the hearing of the jury:)

15
16 MR. HEINEMAN: Again, your Honor --

17 THE COURT: First of all, you better make speaking
18 objections up here. Those are the ones that are to be made
19 up here.

20 MR. HEINEMAN: All right. Your Honor, again this
21 procedure is patently unfair to the Defendants. You let Mr.
22 Carr sit there and make these speeches in front of the jury,
23 which are patently wrong, and everybody knows that they're
24 wrong, and then you make me come up here and don't let me

1 respond so that the jury can hear my response. I object to
2 that. I think it's patently unfair, and I want to make that
3 clear for the record again now.

4 Secondly, it's not within his province to correct
5 this witness. The Court has instructed the witness. Those
6 questions are improper. Those statements are improper. In
7 addition, the witness has said you are the one that told me
8 these are documents submitted to the Worker's Compensation.
9 That is absolutely accurate. He doesn't know whether they
10 are or not. He was told by the Court and by Mr. Carr
11 yesterday that they were submitted to the Worker's
12 Compensation Commission. He doesn't know that.

13 MR. CARR: But he is challenging it, Counsel.

14 MR. HEINEMAN: He isn't challenging it.

15 MR. CARR: He most certainly is. He's refusing to
16 answer the question. He is casting doubt on whether or not
17 these reports were submitted to the Worker's Comp.

18 MR. HEINEMAN: No, he didn't.

19 MR. CARR: He is saying that I just have to take
20 your word for it, when in fact the Court has ruled on it.
21 You have given them to us, you have told us these were
22 submitted to the commission. They're marked on the front of
23 them they were submitted to the Commission, and this witness
24 has no right to challenge that. He has no right to leave

1 the implication to the jury that these were somehow or other
2 just things that I said were submitted to the Commission,
3 because I have no idea what was submitted to the Commission.
4 I have relied on what you have said, and the Court has
5 relied upon what you have said.

6 MR. HEINEMAN: No, you have said it.

7 MR. CARR: The Court has ruled that they were
8 submitted to the Commission.

9 MR. HEINEMAN: The Court has ruled --

10 MR. CARR: This witness does not have the right to
11 contradict the Court, and neither do you, Counsel. You can
12 put it in the record that you don't agree with the Court,
13 but you haven't got the right to contradict the Court.

14 MR. HEINEMAN: Now just one minute, Mr. Carr.
15 This witness was saying tha he doesn't know if these are the
16 only records that were submitted to the Worker's Comp
17 Commission. He said that. He doesn't -- he has no
18 knowledge --

19 MR. CARR: That has nothing to do with it. I
20 didn't ask him whether or not they were the only records.

21 MR. HEINEMAN: Do you mind if I say something
22 here? He has no knowledge as to whether or not these things
23 were submitted to the Commission. All he knows is he as
24 told that. And he has said -- Mr. Carr asked him when you

1 say this record, what are you referring to. He said I'm
2 referring to this document that you said was submitted to
3 the Commission. That's what he said. That's a perfectly
4 reasonable, honest response to the question.

5 THE COURT: First of all, I have found that those
6 are the records submitted to the Comp Commission. They have
7 been accepted on that basis. They've been used on that
8 basis.

9 Number two, his comment about any other records is
10 not at all responsive to the question that was asked of him.
11 It follows a long pattern that this witness has had of
12 interjecting matters that are unresponsive to the questions
13 that are asked of him.

14 Number three, I think it is proper impeachment of
15 the witness to question him as to his knowledge that his
16 going against the dictate, or an order, or a request of the
17 Court, under the circumstances what Mr. Carr did was not
18 improper. If it were improper I would order it stopped, and
19 I would correct it. I heard what was said. I know what has
20 happened in this matter. What he did was not improper.

21 The witness' response as to the other, you know,
22 not knowing whether anything else was submitted, is not at
23 all responsive to the question. There's a long pattern that
24 this witness has had of making non-responsive answers to

1 questions of Counsel. I think that covers all the grounds
2 that you had.

3 Number three -- number three, I have ordered that
4 all these types of arguments be made up here for reasons I
5 have already made in the record, and I think that despite
6 the actions of this witness in other matters that have gone
7 on, that these arguments are made at the bench has made the
8 proceedings in front of the jury a lot smoother, a lot less
9 abrasive, and has generally helped in the conduct of this
10 trial.

11 From my witnessing of how things have proceeded
12 since I have put forth this order, the motions are to be
13 argued at the bench. I think it was a wise move, and I am
14 going to continue to enforce that, enforce it strictly. I
15 think it has definitely helped. In the progress of this
16 trial I think it has helped. I think that it's something
17 that I should continue, and I will probably adopt it in
18 other trials in the future. I think it has proved to have
19 worked out very well. I think that covers everything.

20 MR. HEINEMAN: There's one more thing, your Honor.
21 I would like to have a continuing objection. I'm not sure
22 if the Court gave me a continuing objection yesterday to any
23 questioning of this witness on this Plaintiffs' Exhibit
24 1782.

1 THE COURT: I think I did, but I will again.

2 MR. HEINEMAN: Without it being admitted into
3 evidence on the basis that this witness has never seen the
4 document before, he didn't prepare it, he knows about it,
5 and, therefore, it can't be used as impeachment of him. So
6 it has to be used-- it has to be put in evidence before he
7 can be questioned about it.

8 THE COURT: I think you asked for one yesterday.
9 I gave it, but I will give it again in case it wasn't from
10 yesterday.

11
12 (The following proceedings were had in the
13 presence and hearing of the jury:)

14
15 Q (By Mr. Carr) Dr. Suskind, by the response that
16 you gave to me, you have implied that there may be other
17 reports of Dr. Nestmann that have been submitted to the
18 Worker's Compensation Commission in addition to or different
19 from the ones that are contained in Plaintiff's Exhibit
20 1782. Do you have any knowledge that any other reports were
21 submitted to the Commission other than those reports that
22 are contained in 1782?

23 A I know at least one, sir.

24 Q Do you have any knowledge, sir -- you do have

1 knowledge of one, sir?

2 A Yes.

3 Q What one is that?

4 A That's on a Mr. Cecil Cunningham.

5 Q Doctor, Cecil Cunningham's report is included in
6 both groups. It's included in 1779 and it's included in
7 1782. Now where is the report -- and these are the two
8 reports that we have been given by Monsanto. Have you seen
9 some other report, sir, a third report?

10 A Well, I'm not altogether sure about the first one.
11 If it's the one of June 8th, which was a date of an
12 examination. The date of an examination of Mr. Cunningham
13 on June 8th in which -- and I have read this recently -- he
14 indicated that he has a moderately severe psychoneurosis.

15 Q Doctor, is the report of June 8th that you're
16 talking about, sir --

17 A Yes.

18 Q -- on Cecil Cunningham?

19 A Yes.

20 Q All right. Now, Doctor, turn to the exhibit on
21 Cecil Cunningham, that is part of 1782, which has been
22 submitted to the Commission, and see if you see there, sir,
23 the diagnosis of psychoneurosis.

24 A I don't see it in this copy, sir.

1 Q All right. Now, Doctor, turn to Exhibit 1779, the
2 one that we were looking at, sir, that is the group exhibit
3 that we started to go through, and we went through Mr. Cecil
4 Cunningham, and see, sir, if you note that in that report,
5 bearing the same date, June 8, 1955, that in that report
6 there is a diagnosis of moderately severe or severe
7 psychoneurosis. Do you see that, sir?

8 A I don't see a date on this one, sir. The one I'm
9 referring to had a definite date, June 8, 1955.

10 Q Well, Doctor, if you will compare the two reports
11 you will see that they are exactly the same, word for word,
12 with the exception that the diagnosis of moderately severe
13 psychoneurosis is left out; isn't that correct, sir?

14 A No, sir.

15 Q Are they exactly the same, sir?

16 A No, sir.

17 Q What is the difference between the one in 1779 and
18 the one that was given to the Commission, 1782?

19 A The difference is that the one in 1779 Dr.
20 Nestmann says my diagnoses on this man are oral leukoplakia,
21 left testicular atrophy, moderately severe or severe
22 psychoneurosis. In the one that you have given me in 1782
23 there is no diagnosis at all.

24 Q Certainly. I'll accept that, Doctor.

1 A That's the real difference.

2 Q The one that was submitted to the Commission does
3 not include the diagnosis of this oral leukoplekia, left
4 testicular atrophy, or moderately severe or severe
5 psychoneurosis; is that correct, sir?

6 A That's correct, sir.

7 Q So the Commission did not know that this man had
8 these three problems insofar as you can tell from that
9 report; isn't that correct, sir?

10 A No, sir. No, sir.

11 Q Does that report tell the Commission that he had
12 the problems of severe psychoneurosis?

13 A No, sir.

14 Q It does tell the Commission, if you read the
15 report, that he's got the oral leukoplekia, doesn't it, sir?
16 If you read the full report.

17 A In 1779, yes, sir.

18 Q If you read the full report, it does tell the
19 Commission that he has left testicular atrophy, doesn't it,
20 sir? If you read the full report. The second paragraph,
21 second page of Cecil Cunningham's report, sir, the last line
22 in the second paragraph, where it says "the left testis is
23 atrophic," do you see that, sir?

24 A Are you referring to 1779, sir?

1 Q I am, indeed.

2 A Where is it now, sir?

3 Q And it is in 1782 in exactly the same language, is
4 it not, sir?

5 A Where is the quotation, sir? I'm sorry, I didn't
6 get it.

7 Q Were you listening to me, Dr. Suskind?

8 A Yes, I am listening.

9 Q Were you at the time that I told you where it was,
10 sir?

11 A I was trying to, sir, yes.

12 Q Doctor, I told you it was on the second page,
13 second paragraph, last line, both in the 1782 and in the
14 1779 exhibit.

15 A Yes, sir, I see it, sir.

16 Q It is in both exhibits, isn't it, sir?

17 A It is in both exhibits.

18 Q So the Industrial Commission, the Workmen's
19 Compensation, was told that he had this atrophic testical,
20 was it not, sir?

21 A Yes, sir.

22 Q But the diagnosis of left testicular atrophy was
23 not there, was it, sir? The final diagnosis.

24 A In this report, no, sir.

1 Q So the Commission would have to read that report,
2 1782, and make its own diagnosis that there was testicular
3 atrophy, would they not?

4 A No, sir. No, sir.

5 Q They wouldn't, sir?

6 A No, sir.

7 Q You think the description is sufficient?

8 A No, but there are other ways of transmitting it.

9 Q Doctor, you understand my question, though --

10 A Yes, sir.

11 Q -- relating to this --

12 A Yes.

13 Q -- report?

14 A Yes.

15 Q There are other ways of transmitting it, indeed.

16 By testimony, by letter from lawyers, by all kinds of
17 things. But, Doctor, I'm examining you with regard to these
18 reports and the contents of these reports. You surely
19 understand that, don't you, sir?

20 A Yes, sir.

21 Q Now, Doctor, with regard to the important
22 diagnosis that I'm asking you about, the Industrial
23 Commission, the Worker's Compensation Commission was not
24 told that in Dr. Nestmann's opinion this man was moderately

1 severe or severe psychoneurotic; isn't that correct, sir?

2 A No, sir.

3 Q That isn't correct?

4 A It is correct.

5 Q It is correct. They weren't told that?

6 A In the report that I have, in 1782 --

7 Q Excuse me, Doctor, is it correct or not, they were
8 not told that his diagnosis was a moderately severe or
9 severe psychoneurosis?

10 A From this report they weren't told, yes, sir.

11 Q That's what I'm asking you about, Doctor.

12 A From this report there's no indication of any
13 diagnosis, right, sir.

14 Q That diagnosis is omitted, is it not, sir?

15 A All the diagnoses are omitted, sir.

16 Q Excuse me, Doctor, that diagnosis is omitted, is
17 it not, sir?

18 A Yes, sir. Yes, sir.

19 Q And, Doctor, are there any other reports of which
20 you are aware that deal with Cecil Cunningham that was
21 submitted to the Commission other than the one that's in
22 Exhibit 1782?

23 A Yes, sir.

24 Q And where is that report, sir?

1 A Well, right in 1782, sir.

2 Q There is another report?

3 A Yes, sir.

4 Q Another of Dr. Nestmann's in 1782?

5 A Yes, sir.

6 Q Would you point it out to me, please, sir.

7 Doctor, what you are doing now, I asked you for a report,
8 did I not, sir?

9 A Well, this is a report, sir.

10 Q Excuse me. Doctor, did I ask you for a report of
11 Dr. Nestmann? Did I ask you where there was another report
12 of Dr. Nestmann in this exhibit?

13 A This is a report of Dr. Nestmann, sir.

14 Q Would you answer my question, please, Doctor?

15 A Yes.

16 Q You've showed me a page that is the Monsanto's
17 lawyers summary of Dr. Nestmann's testimony, have you not,
18 sir?

19 A I don't believe that's a Monsanto --

20 Q Indeed it is a Monsanto. You see that, sir?
21 Brief on behalf of Monsanto Chemical Company. Do you see
22 that? This is part of their brief, Doctor. Do you
23 understand that?

24 A Yes, sir.

1 Q All right. Now what you are reading there,
2 Doctor, what you directed my attention to, Doctor, was a
3 summary of a lawyer for Monsanto of Dr. Nestmann's
4 testimony; isn't that correct, sir?

5 A No, I don't know that, sir.

6 Q Doctor, what does it say at the top of the page?

7 A It doesn't say that it's a lawyer's testimony.

8 Q What does it say, sir, at the top of the page?

9 A It says name, Cecil Cunningham, claim number,
10 summary of Dr. Nestmann's testimony --

11 Q Thank you, Doctor.

12 A -- June 8, 1955.

13 Q All right, Doctor. That's enough, doctor. Does
14 it say that this is Dr. Nestmann's report, or does it say
15 this is a summary of Dr. Nestmann's testimony?

16 A It's a report on Dr. Nestmann's testimony.

17 Q Yes, indeed, Doctor. Now I asked you for a report
18 of Dr. Nestmann's -- a report of Dr. Nestmann, did I not,
19 sir?

20 A Well, this is a report, I would say, of Dr.
21 Nestmann. It's Dr. Nestmann's testimony, sir.

22 Q Now, Doctor, this is what a lawyer is summarizing,
23 and you know it.

24 A No, I do not know it, sir. I didn't even realize

1 that.

2 Q You didn't, did you?

3 A No, sir.

4 Q Now you do realize it?

5 A I'm not even sure that I do. I don't know that
6 this is a --

7 Q Doctor, I want you to assume that that is a
8 lawyer's summary of Dr. Nestmann's testimony, since you
9 don't know it. Will you assume that, please, sir?

10 A I am assuming that, sir.

11 Q If it is a summary, it's not the doctor's report,
12 is it, sir?

13 MR. HEINEMAN: Objection, your Honor. May Counsel
14 approach the bench?

15 THE COURT: Yes. Yes, you may.

16
17 (The following proceedings were had at the bench
18 out of the presence and hearing of the jury:)

19
20 MR. HEINEMAN: This is a, if we're talking about
21 the right thing here, what the doctor is referring to is a
22 direct quote from the testimony.

23 THE COURT: Yes, but that's not a report. That's
24 what he was asked.

1 MR. HEINEMAN: He was asked is that a lawyer's
2 summary?

3 THE COURT: He said yes.

4 MR. HEINEMAN: What he's got here, question,
5 quote. It's a quotation.

6 THE COURT: Yes.

7 MR. HEINEMAN: It's a quotation from his
8 testimony.

9 THE COURT: Yes, as part of a summary of Dr.
10 Nestmann's testimony.

11 MR. HEINEMAN: That's right.

12 THE COURT: Right. It's not a report.

13 MR. HEINEMAN: What he is saying is that this --
14 what this witness is saying is that this is clearly a report
15 of what Dr. Nestmann said.

16 MR. CARR: No question about that.

17 THE COURT: But that's not a report.

18 MR. CARR: It's not Dr. Nestmann's report.

19 THE COURT: You've been in practice a long time,
20 you know what a report is and you know what testimony is.
21 That's the point he's trying to make. That's all, we all
22 know that. You knew that your first year out of law school.

23 MR. HEINEMAN: What he's saying is there's nothing
24 there but the lawyer's summary. That's what he asked the

1 witness. That's not true. What there is is a direct
2 quotation from what the doctor testified to in front of the
3 Worker's Compensation Commission. That's not just a
4 summary.

5 THE COURT: I have seen a lot of instances, and
6 I've done, and I'm sure you have too, where part of a
7 summary of something includes a quotation, a small portion
8 that you want to use in the exact language for some reason,
9 usually for clearing of the materials or some other reason.
10 The fact that it contains a quotation is not a report.

11 It's a summary, number one. Number two, this is
12 conjecture. Whether it is a summary, or whether it's a
13 summary and a quotation, it is testimony and not a report.
14 We're going down a side alley. I would overrule your
15 objection on this basis, I think we should get back --

16 MR. HEINEMAN: This is the very reason why it's
17 improper for the witness to be questioned about something
18 that's not in evidence that the jury can look at for
19 themselves, because the question implies that all you have
20 in here is lawyer's language, and that is a direct quote
21 from the doctor. That's what's wrong with the implication
22 that Mr. Carr made. I object to it.

23 THE COURT: Absolutely not. Overruled.
24

1 (The following proceedings were had in the
2 presence and hearing of the jury:)

3
4 Q (By Mr. Carr) Doctor, you are and have been aware
5 at least since yesterday that Dr. Nestmann did testify at
6 the hearing with regard to Cecil Cunningham; isn't that
7 correct, sir?

8 A Yes, sir.

9 Q And, Doctor, you knew that when I started asking
10 you questions about Dr. Nestmann's reports, did you not,
11 sir?

12 A Yes, sir.

13 Q Now, my question, sir, disregard for the time
14 being, we'll get to it, disregard for the time being, sir,
15 Dr. Nestmann's testimony.

16 A Okay, I will.

17 Q Will you do that, sir? My question to you, sir,
18 was there ever a report of Dr. Nestmann that was submitted
19 to the Commission in which it was stated that Dr. Nestmann's
20 diagnosis was he had a moderately severe or severe
21 psychoneurosis?

22 A I really don't know, sir.

23 Q Well, then, Doctor, the only knowledge that you
24 have of reports that were submitted to the Commission is

1 that report which is contained in Plaintiffs' Exhibit 1782;
2 isn't that correct, sir?

3 A No.

4 Q What other knowledge do you have of Dr. Nestmann's
5 reports that was submitted to the Commission other than that
6 one that's contained in that exhibit?

7 A Very frankly, sir, I am not -- I don't know
8 whether or not the report in 1779 wasn't submitted. You
9 know I really don't know that it wasn't.

10 Q Doctor, my question to you, sir, is what knowledge
11 do you have that a report was submitted to the Commission
12 other than the one that is in 1782? You understand my
13 question? Please answer my question, sir. If you know that
14 1779 was submitted to the Commission, if you know that Dr.
15 Nestmann's report as it regards Cecil Cunningham was in fact
16 submitted to the Commission, that's fine, and I'll question
17 you on that and we'll discover where it is in the
18 Commission's record. We'll ask Monsanto to produce that
19 particular copy.

20 A Okay.

21 Q But at this point in time, Doctor, the only one
22 that Monsanto has produced that was submitted to the
23 Commission is the one that is in 1782. Now do you know of
24 some other report that Monsanto has not produced to us that

1 was submitted to the Commission other than the one in 1782?

2 A No, I do not know, sir.

3 Q All right. And the one that is in 1782 does not
4 contain the diagnosis of moderately severe or severe
5 psychoneurosis, does it, sir?

6 A In this particular copy, it does not, sir.

7 Q Doctor, is there any copy in which it does appear,
8 sir?

9 A I don't know, sir.

10 Q Now, Doctor, these various reports that we've been
11 through, we have completed the Exhibit 1779, have we not,
12 sir?

13 A I don't know. Have we?

14 Q Doctor, do you have knowledge of any report that
15 was submitted to the Commission in which the diagnosis of
16 Dr. Nestmann was severe or moderate or mild psychoneurosis,
17 sir?

18 A Yes.

19 Q And what report is that, sir?

20 A It's a report of the testimony of Dr. Nestmann --

21 Q Doctor, you're talking about testimony. Do you
22 understand what the word "report" means?

23 A There's a report of the testimony, sir.

24 Q Doctor, do you understand? I'm not asking about a

1 report of testimony.

2 A Yes, sir.

3 Q You know that I'm asking you about a Dr. Nestmann
4 report, don't you, sir, a written report as we've just gone
5 through, sir?

6 A No, I don't understand that, sir, because report
7 to me --

8 Q Doctor, we went through that when we talked about
9 the summary of the lawyer's summary of Dr. Nestmann's
10 testimony, did we not?

11 A Right.

12 Q Doctor, you do know that a report of a doctor is
13 as is in 1779, or those documents in 1782 that bear his name
14 and his signature. You understand that. That is a doctor's
15 report. You do know that, don't you, sir?

16 A No, sir.

17 Q You don't know that?

18 A No, sir.

19 Q All right, Doctor. If you don't know that then
20 we'll have to pass to the next subject. Do you know of any
21 documents, sir, signed by Dr. Nestmann that were submitted
22 to the Commission with regard to any of these people in
23 which the diagnosis of psychoneurosis was contained, sir?

24 A Yes, sir, in a report. In a report. I regard

1 that as a report.

2 Q Doctor, did you hear my question? It included the
3 word signed by Dr. Nestmann.

4 A Well, I would assume that the testimony that he
5 gave --

6 MR. CARR: Your Honor, this witness insists upon
7 playing games.

8 THE WITNESS: -- would be signed too. No, I'm
9 not.

10 MR. CARR: He knows the difference between
11 testimony.

12 Q (By Mr. Carr) Doctor, what makes you think that
13 Dr. Nestmann signed the testimony?

14 A He could sign a transcript.

15 Q Who told you that?

16 A I don't know. He could have, sir.

17 Q Doctor, now you're simply speculating, and Dr.
18 Nestmann did not sign his testimony. A court reporter
19 certifies that it's correct. Have you ever signed your
20 testimony in court, sir?

21 A Not in court, but I have certainly --

22 Q Did you sign your testimony in Worker's
23 Compensation?

24 A I've signed depositions, sir.

1 Q Sure, you have. Did you sign your transcript of
2 testimony before the Worker's Compensation Commission in
3 this very matter, Dr. Suskind?

4 A I don't recall, sir.

5 Q Doctor, back to the question that I asked you, do
6 you know of any reports signed by Dr. Nestmann, submitted to
7 the Commission in which he states that any of these people
8 had psychoneurosis?

9 A If you mean doctors' letters --

10 Q You heard what I said.

11 A Doctors' letters, no, I don't know of any other.

12 Q Doctor, I don't mean doctors' letters. I said
13 report. I didn't say letter. I said any report signed by
14 Dr. Nestmann that was submitted to the Commission in which
15 he says there's a psychoneurosis.

16 A Yes, sir, I do.

17 Q What is that, sir?

18 A That's a report on Mr. Willard.

19 Q Yes, Doctor, I have it in my hand.

20 A Yes, sir.

21 Q There is a report with regard to Mr. Willard,
22 isn't there, sir?

23 A Yes, sir. May 3rd, 1953, sir.

24 Q Yes, Doctor. I'd like to have it marked as a

1 Plaintiffs' exhibit.

2

3 (Plaintiffs' Exhibit 1783 was marked for
4 identification by the court reporter.)

5

6 Q (By Mr. Carr) I hand you now what's been marked
7 Plaintiffs' Exhibit 1783 and ask you if you recognize that
8 as the report signed by Dr. Nestmann in 1953? You do
9 recognize that. It has his signature, does it not?

10 A Yes, sir.

11 Q It has the state compensation stamp on it.

12 A Yes, it does.

13 MR. CARR: I offer that into evidence, if it
14 please the Court.

15 THE COURT: Any objections?

16 MR. HEINEMAN: Your Honor, we make the same record
17 we made before with respect to documents of this kind.

18 THE COURT: Fine.

19 MR. HEINEMAN: I think the Court has already
20 ruled.

21 THE COURT: I will incorporate arguments of both
22 Counsel. It's admitted over objection.

23 MR. CARR: I ask leave to pass it to the jury.

24 THE COURT: Yes you may.

1 Q (By Mr. Carr) Doctor, this report is in
2 relatively small print and it's somewhat difficult to read.
3 Have you been given a report that you have with you that
4 would be blown up that would have better --

5 A No, I don't have anything of that nature with me,
6 sir.

7 Q You were aware of this report, weren't you, sir?

8 A I was aware of this report, yes, sir.

9 Q You've read it, haven't you, sir?

10 A I believe I have, yes, sir.

11 Q Yes. You read it probably just last night, didn't
12 you?

13 A No, sir.

14 Q All right, Doctor, that's not important.

15 A I read it many days ago, sir.

16 Q This report is dated May 4, 1953, and it was a
17 report that was sent directly to the Commission; is that
18 correct, sir?

19 A It was requested by the Commission, sir, yes, sir.

20 MR. CARR: Your Honor, would you direct the
21 witness to respond to my question and not tell me whether or
22 not it was requested by the Commission.

23 THE COURT: Doctor, please respond to the
24 question.

1 THE WITNESS: Yes, sir.

2 THE COURT: I don't think that that was a
3 responsive answer. Listen to the question again and please
4 respond to the question.

5 THE WITNESS: Yes, sir.

6 THE COURT: I'm sorry, I didn't hear what you
7 said, sir.

8 THE WITNESS: Sorry. I said yes, it was sent to
9 the Commission. This is in answer to his question, sir.

10 THE COURT: Thank you.

11 Q (By Mr. Carr) Doctor, in regard to this report,
12 with respect to Mr. Willard, the Commission did ask Dr.
13 Nestmann to examine Mr. Willard, did they not, sir?

14 A I believe they did.

15 Q Yes. And after this report was submitted some two
16 to three years after this report was submitted Monsanto
17 hired Dr. Nestmann to examine some 25 others, did they not,
18 sir?

19 A I don't know whether they hired him or not.

20 Q You don't know that, sir?

21 A No, sir.

22 Q We'll get to that in a moment. You don't know
23 that from that point on, after this report was made, that
24 Dr. Nestmann became a Monsanto witness, testifying in behalf

1 of Monsanto, submitting reports in behalf of Monsanto?

2 A I know that he did it at least once.

3 Q Well, Doctor, you know that he did it more than
4 that. This exhibit is already in evidence in which he has
5 described that Dr. Nestmann, his findings concerning
6 psychoneurosis in most of the employees he has examined for
7 us. You know that, don't you, sir?

8 A That's what that Wager report reads. Whether it's
9 accurate --

10 Q That's what Mr. Wager of the Monsanto Company says
11 about Dr. Nestmann, doesn't he, sir?

12 A That's what he says in that report, sir.

13 Q Doctor, back to this report, Dr. Nestmann says as
14 far as the present illness is concerned that the man has got
15 a considerable number of symptoms, doesn't he, sir, no
16 strength for four years, shortness of breath for four years,
17 pain like a toothache beneath both knees? Does he not, sir?
18 Present for four years. Do you see that, sir?

19 A Yes, I do, sir.

20 Q Unable to sleep, darned nervous for four years.
21 Do you see that, sir?

22 A Yes, I do, sir.

23 Q These complaints that he's made there are very
24 similar to the complaints that many of these other workers

1 made; isn't that correct, sir?

2 A There are some similarities.

3 Q It's not unique with Mr. Willard, is it, sir?

4 A I believe that there is a uniqueness about Mr.
5 Willard, yes, sir.

6 Q Doctor, I didn't ask you if there was a uniqueness
7 about Mr. Willard. Hopefully there's a uniqueness about all
8 of us. My question, sir, is that the complaints that he's
9 making there, sir, are not unique, they are the same or
10 similar to the complaints made by many, many others.

11 A No, sir.

12 Q They're not, sir?

13 A No, they are more numerous, sir.

14 Q Well, he may have more complaints, sir, but the
15 complaints he has are similar to the ones that others have
16 made; isn't that right, sir?

17 A Some of them are, right, sir.

18 Q Doctor, there's a lot of men complained about loss
19 of strength, weakness, have they not?

20 A Some of them have.

21 Q Doctor, more than some. Of the ones that you
22 examined, a considerable number; isn't that correct, sir?

23 A Some of them, sir.

24 Q Well, Doctor, when you say some of them, how many

1 do you mean, sir?

2 A Well, I can't tell you what the exact numbers
3 were. But in my memory, sir, they weren't a very large
4 number, which you are inferring, sir.

5 Q Doctor, there were 21 of your 36 that complained
6 of fatigue, 27 complained of acheiness and pains; isn't that
7 correct, sir?

8 A That's in 1953, sir, yes.

9 Q Isn't that correct, sir? Now that's a
10 considerable number, isn't it, sir?

11 MR. HEINEMAN: Objection, your Honor, the question
12 was on weakness, wasn't it?

13 THE COURT: Objection is overruled.

14 Q (By Mr. Carr) Isn't this a considerable number,
15 Doctor, 21 fatigue, 27 aches and pains?

16 A Yes, that -- that is.

17 Q Doctor, second complaint is shortness of breath.
18 Now there's a considerable number that have complained of
19 shortness of breath, aren't there, sir?

20 A No, sir.

21 Q Doctor, there's nine, according to your report in
22 1953.

23 A Well, we haven't counted those who complained of
24 shortness of breath, so --

1 Q Yes, you did, Doctor. On page five you have the
2 ones that complained of shortness of breath.

3 A Okay.

4 Q Don't you, sir?

5 A That's nine, sir.

6 Q Doctor, you did count them, didn't you, sir?

7 A Yes, sir.

8 Q There's nine.

9 A Okay.

10 Q That's a considerable number, isn't it, sir?

11 A Yes, sir.

12 Q And, Doctor, complains of pain beneath both knees,
13 but especially the right knee, there most of the time, it
14 comes and goes. A considerable number of men complained
15 about pains in the legs, didn't they, sir?

16 A Some of them did, yes, sir.

17 Q Doctor, is 27 a considerable number? Doctor, is
18 27 a considerable number? Page 5 of your 1953 report, if
19 that's what you're trying to find, Doctor.

20 THE COURT: Doctor, please answer the question.

21 THE WITNESS: I can't answer that question that
22 way, sir.

23 Q (By Mr. Carr) Doctor, my question is is 27 a
24 considerable number. That's my question.

1 A 27, yes, sir, that's a considerable number. But
2 that doesn't refer to the pains in the legs.

3 Q That's my question, Doctor. Doctor, that's my
4 question. Is 27 a considerable number?

5 A 27 aches and pains in a variety of places may be,
6 but you're referring to Mr. Willard --

7 Q Doctor, I'll get to what I'm referring to in a
8 moment.

9 A Well, you started off with one question, and then
10 you shift to another.

11 Q Doctor, if I do that, it's because I want to do
12 that. I have the right to do that. You do not have the
13 right to propose the questions that I may ask you. If I
14 twist anything --

15 MR. HEINEMAN: Objection, your Honor, he doesn't
16 have a right to confuse the witness.

17 Q (By Mr. Carr) If I misrepresent anything, your
18 lawyer --

19 THE COURT: Gentlemen, could you approach the
20 bench for a minute, please.

21

22 (The following proceedings were had at the bench
23 out of the hearing of the jury:)

24

1 THE COURT: If you make one more remark like that
2 in front of this jury in the course of this, I'm holding you
3 in contempt.

4 MR. HEINEMAN: Your Honor, do you conceive in your
5 years of sitting on the bench that what he was doing right
6 then, Mr. Carr was doing, is proper? Do you have any
7 conception that that was a proper behavior for a lawyer in
8 questioning a witness?

9 THE COURT: What he did was not improper. What
10 you did is a violation of my rules against speaking
11 objections. Mr. Carr has been trying to explain to this
12 witness what he's supposed to do, and he's explained to him
13 a number of times. The witness does not -- and I have
14 explained to this witness a number of times. What you did
15 was in violation of my rule against speaking objections.

16 MR. HEINEMAN: Your Honor --

17 THE COURT: I don't want it done again.

18 MR. HEINEMAN: Your Honor, it is true that what I
19 just said was a speaking objection, and it was in violation
20 of your order, and it was unintentional, and I apologize to
21 the Court for that.

22 THE COURT: The apology is accepted.

23 MR. HEINEMAN: I must say that my emotions were
24 aroused by the impropriety of what I was observing Mr. Carr

1 doing, an I strenuously object to what he's doing as
2 absolutely improper. He is not entitled to chastise the
3 witness. He's not entitled to instruct the witness. The
4 Court's province is to instruct the witness. I object to
5 it. I just got carried away.

6 THE COURT: Let's take a break.

7

8 (The following proceedings were had in the
9 presence and hearing of the jury:)

10

11 THE COURT: Ladies and gentlemen, we'll take a
12 short recess at this time. I would remind you that you're
13 not to discuss this matter among yourselves, with anyone
14 outside the jury panel. We'll take a short recess at this
15 time.

16

17 (Short recess.)

18

19 Q (By Mr. Carr) Dr. Suskind, at the break you
20 suggested that when I described the 27 people who had aches
21 and pains according to your report in 1953 you suggested
22 that I misrepresented that because the exhibit with regard
23 to Willard refers to pains in the legs. Do you recall that,
24 sir?

1 A Yes.

2 Q Doctor, in point of fact, do you know how many
3 people were actually complaining of pains in the legs in
4 1953 according to your report, sir?

5 A I haven't counted them, sir.

6 Q Would it surprise you -- would it surprise you,
7 sir, if I told you that at least 19 were yet complaining of
8 pain in the legs in 1953 according to your report, sir?

9 A I can't comment, because I haven't counted them,
10 sir.

11 Q Doctor, but you have commented. You have stated
12 to this jury that I twisted or misrepresented when I asked
13 the question weren't a large number of people having this
14 same kind of complaint, that is pain in the legs, and you
15 said my question was improper because it was suggested by
16 that that a large number had pain in the legs like Willard,
17 when in fact a large number did not have pain in the legs.
18 Do you recall that, sir? That was the implication.

19 A No, I do not recall it the way you stated, sir.

20 Q Do you agree, Doctor, that you suggested in this
21 courtroom that I was misstating your record insofar as pain
22 in the legs?

23 A No, I did not, sir.

24 Q Do you agree, then, Doctor, that there were a

1 large number of individuals who had pain in the legs in
2 1953?

3 A I haven't counted them, so I can't tell you, sir.

4 Q Do you disagree with my assertion, sir, that I
5 have counted them and there's 19 at least, sir?

6 A Since I haven't counted them, I can't verify it,
7 sir.

8 Q Well, Doctor, it's your report, and are you saying
9 that it's not correct?

10 A No, I'm not at all, sir, not at all.

11 Q Doctor, do you agree that a large number did
12 indeed have pain in their legs, or so reported to you and so
13 you reported to us in your 1953 report?

14 A There were a number of persons of the 36 who had
15 complained, had complained of pains in the legs.

16 Q Now, Doctor, that is not responsive to my
17 question. My question is a large number of persons in '53
18 who presently complain of pains in the legs.

19 A No.

20 Q Do you agree that there was a large number of the
21 workers that you examined in 1953 that had present
22 complaints of pains in the legs, sir?

23 A No, sir.

24 Q Do you quarrel with the number 19 as being a large

1 number?

2 A I would quarrel with that, sir.

3 Q You say 19 out of 36 examined would not be a large
4 number?

5 A It might not be, sir.

6 Q Doctor, is 19 a large number? You said earlier
7 nine was a large number. Now 19 is not a large number.

8 MR. HEINEMAN: Objection. May Counsel approach
9 the bench?

10 THE COURT: Yes, you may.

11

12 (The following proceedings were had at the bench
13 out of the hearing of the jury:)

14

15 MR. HEINEMAN: Your Honor, we have here another
16 misrepresentation by Mr. Carr of what the witness testified
17 to. He just said you testified before that nine was a large
18 number. The witness testified in response to Mr. Carr's
19 question that nine was a considerable number.

20 MR. CARR: Well, I'll amend that.

21 MR. HEINEMAN: Thank you.

22 THE COURT: Okay. Fine.

23

24

1 (The following proceedings were had in the
2 presence and hearing of the jury:)

3
4 Q (By Mr. Carr) Doctor, do you agree that 19 is a
5 considerable number of people to have this complaint?

6 A Yes, I do, sir.

7 Q Yes. So then you would agree that Mr. Willard,
8 and would you agree with my statement to you, sir, that at
9 least 19 had that complaint?

10 A I can't agree, because I haven't counted them.

11 Q Would you disagree?

12 A I would assume that you are accurate, sir.

13 Q Doctor, if that is in the record, and your report
14 is in the record, then that is a considerable number that
15 had the complaint of pain in the legs in 1953.

16 A They had complaints of pain in the leg.

17 Q Is that correct, sir?

18 A That would be so, sir, if the 19 is accurate.

19 Q So Mr. Willard then was not unique in his
20 complaint, was he, sir?

21 A Oh, yes, he was, sir.

22 Q 19 have similar complaints, sir.

23 A I'm not saying -- it had nothing to do with pains
24 in the legs, sir.

1 Q Doctor, my question had to do with pains in the
2 legs. I've asked you, and I went down, was going down this
3 list of complaints, sir, and asking you whether or not Mr.
4 Willard was unique, that's how we got on this --

5 A I said he was unique, sir.

6 Q Doctor, my question to you is having pain in the
7 legs, the complaint of pain in the legs, is that unique?

8 A No, sir, that is not -- that is not unique, sir.

9 Q That is my question, Doctor.

10 A Well, if that's your question, that is not unique.

11 Q Doctor, the next complaint that he had, that he's
12 unable to sleep and darned nervous for four years, that is
13 not a unique complaint, is it, sir? Doctor, we've already
14 established that 17 of your people that you examined in 1953
15 had the complaint of nervousness. This category here,
16 number four, unable to sleep, too darned nervous for four
17 years, there's a large number of people that were darned
18 nervous, weren't there, sir?

19 A There was 17 who complained about nervousness,
20 sir.

21 Q He was not unique in having complaints of
22 nervousness, was he, sir?

23 A That aspect of it is not unique, sir.

24 Q Doctor, we also described that he's lost

1 confidence in himself for the past one and a half years; is
2 that correct, sir? Is that what it says, sir?

3 A That's what it reads, sir.

4 Q That's not unique, is it, sir?

5 A Yes, sir.

6 Q Doctor, there was a significant number of persons
7 examined by Dr. Nestmann that, the reports that we have, all
8 except one, were he had diagnoses, all except one were
9 diagnosed as psychoneurotic, weren't they, sir?

10 A Which exhibit are you referring to?

11 Q Exhibit 1779 that we just went through, sir.
12 All except one on the reports where he made diagnoses or
13 impressions, all except one were considered psychoneurotic;
14 isn't that correct, sir?

15 A That's correct for that question, sir.

16 Q All right, Doctor. Now, a psychoneurotic indeed
17 loses or has little confidence in himself; isn't that
18 correct, sir?

19 A No, sir.

20 Q That isn't correct?

21 A No, that is not a -- that doesn't need -- that
22 does not need to be a characteristic of psychoneurosis.

23 Q Doesn't need to be, but may be, Doctor.

24 A Oh, in rare instances, sir.

1 Q Only in rare. Well, then, Doctor, perhaps this is
2 one that we can not establish, but certainly that others
3 have got the problem of lost confidence; is that correct,
4 sir?

5 A That is unique, sir.

6 Q This you would say would be unique. The complaint
7 of cough continually would also be unique, would it not,
8 sir?

9 A I think so.

10 Q And his complaint of quivering, something in the
11 upper abdomen, present for two and a half years -- well,
12 there were a number of complaints of upper quadrant pain,
13 wasn't there, sir?

14 A That is not pain, sir, that is quivering.

15 Q I understand that.

16 A Completely different.

17 Q Doctor, I understand that. There was a number of
18 persons that had abdominal complaints, weren't there, sir?

19 A There was some. Not many, sir. A very few.

20 Q Not many, sir?

21 A No.

22 Q How many do you judge there were, Doctor?

23 A I have no idea.

24 Q Well, Doctor, if you have no idea --

1 A From my recollection --

2 Q Doctor, how can you say that there weren't many if
3 you have no idea? Have you counted them, sir?

4 A I haven't counted them recently, sir. I'd be
5 happy to do that for you, if you want me to.

6 Q Doctor, when we went through Dr. Nestmann's report
7 there were a number of these people that complained of
8 abdominal complaints, weren't there, sir?

9 A No, sir, I don't recall that.

10 Q Look at the very first one, Jeffers, stomach
11 aches. Chief complaint was stomach ache, was it not, sir?

12 A It says "like it is a little weak." I don't know
13 what that really means, sir.

14 Q Doctor, you may not know what it really means,
15 just like I don't know what it really means to say there's
16 quivering in the stomach. That isn't the point. The point
17 is there were a number of others that had like complaints.

18 A Out of the 1783 there's just one, sir.

19 Q Out of 1783?

20 A I mean 1779. I'm sorry. Among the chief
21 complaints, the stomach seems like it's a little weak is
22 okay for Mr. Jeffers, but in looking through the rest of
23 them I don't find any stomach complaints among the chief
24 complaints, sir.

1 Q Well, there may not be among the chief complaints,
2 but they are in the body. If you look at Wright, he's got
3 upset stomach a lot of times and belly ache, doesn't he,
4 sir?

5 A Mr. Wright?

6 Q Yes. I think it's the last -- second to last one.

7 A Okay. Yes, I see that, sir.

8 Q Doctor, in your examination in 1953 you found a
9 number that had these complaints of pain in the abdomen, did
10 you not, sir?

11 A A history of having had complaints.

12 Q Yes, Doctor, that's what --

13 A A history. But not in 1953, sir.

14 Q Doctor, if you'll just look at your boxscore on
15 the first page, on page 34, there is two out -- at least
16 two, sir, out of that first group of six that have these
17 complaints, present complaints of pain in the right upper
18 quadrant, aren't there, sir?

19 A This man had a little problem, sir, yes. Mr.
20 Steele.

21 Q Doctor, I'm not trying to ask you to diagnose it.
22 All I'm trying to establish with you, sir, is that his
23 complaints were not unique. That's all I'm trying to
24 establish, Doctor.

1 A For 1953 they would have been unique because I
2 don't find in the other areas of the boxscores that there
3 were pains in the abdomen, sir.

4 Q Well, Doctor, at least two in your boxscore had
5 the pains --

6 A Only two out of 36 complained of soreness in the
7 right upper quadrant, and they appear to be similar. It's
8 so designated.

9 Q Yes.

10 A But I don't see in the boxscores that there are
11 any other persons who complain about abdominal discomfort or
12 stomach illness, or whatever. So that Mr. Willard's
13 complaint to me would be unique about his stomach complaint.

14 Q Doctor, you had a number that had a development of
15 ulcers, did you not, sir?

16 A There was some that had history of ulcers. I
17 can't count them. I know what they were like in '79, sir,
18 but I can't tell you about 53.

19 Q Well, Doctor, in '79 you found of the exposed
20 people that a significant number, I think you even called it
21 a statistically significant number, had stomach ulcers,
22 didn't you, sir?

23 A Had a history of having --

24 Q Isn't that right?

1 A -- of having upper gastrointestinal ulcers.

2 Q Isn't that correct, sir?

3 A That is correct, sir.

4 Q That was one of the few things that you did find
5 that was statistically significant; isn't that correct, sir?

6 A That was one of the things that by history we
7 found.

8 Q Doctor, we're talking about Mr. Willard's history
9 here, aren't we, and his complaint --

10 A Correct --

11 Q -- complaint about this stomach pain or quivering;
12 correct, sir?

13 A Correct.

14 Q And it developed from 1953 to 1978 that what Mr.
15 Willard's complaint was with his abdomen, you found to be
16 statistically significant by '79; isn't that correct, sir?

17 A There's no history of ulcer in Dr. Nestmann's
18 records.

19 Q Doctor, I'm not asking about a history of --

20 A Are you talking about quivering?

21 Q I'm asking about stomach problems that developed
22 to be true, sir, according to your study of '79. That's
23 what I'm asking about.

24 A We are talking about --

1 Q No, Doctor, excuse me. Listen to my question.

2 A I will, sir.

3 Q You found a significant number of stomach problems
4 by history to have existed in 1979, did you not, sir?

5 A No, sir.

6 Q Is an ulcer a significant problem, Doctor?

7 A We found upper gastrointestinal ulcers --

8 Q My question, sir --

9 A That's part of stomach problems.

10 Q My question, sir, is an ulcer stomach problems?

11 A It is a stomach -- it's a gastrointestinal
12 problem, sir.

13 Q Is that part of the stomach, sir?

14 A It could be part of the stomach.

15 Q Yes, Doctor.

16 A Some of them did not have stomach ulcers.

17 Q Doctor, is it a significant problem to have
18 ulcers?

19 A It might be, if it were -- if it were verified,
20 sir.

21 Q Doctor, did you find -- did you report in your
22 report in 1984 that it was statistically significant, this
23 number of persons with a history of stomach ulcer?

24 A We thought that the -- that the frequency of

1 gastrointestinal ulcers, not any other problem, but
2 gastrointestinal ulcers, history of, was statistically
3 significant, yes, sir.

4 Q And it is a stomach problem, isn't it, sir?

5 A It's one of the stomach problems, sir.

6 Q It is a stomach problem, isn't it, sir?

7 A Some of them are stomach problems.

8 Q Some of the ulcers are stomach problems?

9 A Right. Some of them are.

10 Q And some of them are not?

11 A That's right.

12 Q These gastrointestinal ulcers that you found, sir,
13 by history how many of them were stomach ulcers?

14 A I can't tell you, but we combined the duodenal
15 with the stomach, sir, in order to be accurate.

16 Q Doctor, the duodenal is directly adjoining the
17 stomach, is it not, sir?

18 A Correct, sir.

19 Q Yes. Now, Doctor, Mr. Willard's problem then the
20 history confirmed, by that I mean historically it was
21 confirmed that the stomach problems were significant in the
22 exposed people; isn't that correct, sir?

23 A Not in 1953, sir.

24 Q Doctor, did you listen to my question? I said

1 history. Historically, sir, his problem was confirmed to be
2 statistically significant, that is stomach problems, sir.

3 A No, sir.

4 Q Did you find in '78 to be statistically
5 significant?

6 A Stomach ulcers and duodenal ulcers.

7 Q Yes.

8 A I don't know what his problems were here, sir.

9 Q Did you find that to be significant?

10 A I don't know what his problems were here, sir.

11 Q Doctor, you're not listening to my question.

12 A I am, sir.

13 Q Did you find a stomach ulcer and duodenal ulcers
14 to be statistically significant in '78?

15 A We did, sir.

16 Q Yes.

17 A It's in the paper.

18 Q And, Doctor, was Willard complaining of a stomach
19 problem in '53? This report that's in front of you, Doctor,
20 the symptom that we're talking about, the complaint that
21 we're talking about was related to the stomach, wasn't it,
22 sir?

23 A No, sir. If you're talking about number seven,
24 quivering like --

1 Q An air hammer in the upper abdomen.

2 A I don't know what that means, sir. That's not a
3 stomach problem. It can be anything. It could be a muscle
4 problem.

5 Q And it could be a stomach problem?

6 A It could be a liver problem.

7 Q Doctor --

8 A It could be an esophageal problem.

9 Q It could be a stomach problem?

10 A Very remote. It's very remote, because it's not
11 defined here, sir.

12 Q Doctor, indeed.

13 A You are certainly right, sir.

14 Q The person writing it down didn't define it, sir,
15 but it could be a stomach problem, couldn't it, sir?

16 A Not necessarily, sir.

17 Q Doctor, I didn't ask you not necessarily, did I,
18 sir? Aren't you going to concede that this problem that he
19 had just might conceivably have been, his complaints might
20 conceivably have been a stomach problem?

21 A No, sir.

22 Q You're not going to concede to that?

23 A No, sir. I'm not going to concede to that because
24 it's inaccurate.

1 Q Let's pass on to the next problem, Doctor.

2 A Thank you, sir.

3 Q Doctor, this gentleman also had a complaint of
4 being hot or cold all the time, and I can't read that, takes
5 a chest cold, or catches, it looks like takes a chest cold
6 at frequent intervals, present two and a half years; is that
7 correct, sir?

8 A That's what number nine appears to be, sir.

9 Q Doctor, there were others that have complained
10 over the years about infectious problems, were there not,
11 sir?

12 A No, sir, very few.

13 Q Well, Doctor, very few is others, isn't it, sir?

14 A Not out of -- not uniquely, sir.

15 Q Doctor, is very few others -- Mr. Willard was not
16 unique in having complaints of colds following this
17 exposure, was he, sir?

18 A Having frequent colds might be unique, sir. Yes,
19 he complained about frequent colds.

20 Q All right. I think that's unique, sir.

21 A When people do have colds, you and I have colds --

22 Q Excuse me, Doctor. Do you think that's unique
23 then?

24 A Yes. I think that he is complaining uniquely.

1 Q Doctor, I don't know that I understand that. Has
2 he got a unique complaint?

3 A He has a unique complaint, sir, yes.

4 Q All right. Doctor, the reporter, Dr. Nestmann,
5 goes on to say that he was exposed to the explosion as
6 previously described March 8, 1949, doesn't he, sir?

7 A Yes, sir.

8 Q In point of fact, we've already established that
9 it was not an explosion, haven't we, sir?

10 A Well, not in the sense that explosions are usually
11 regarded --

12 Q We already established that it was not an
13 explosion, Doctor. I think you can answer that question.

14 A Yes.

15 Q Did we establish that this morning?

16 A Yes.

17 Q Doctor, I established it with you for a purpose
18 this morning, because I knew I was going to ask about this
19 report.

20 A Okay.

21 Q As you know -- I see you smiling -- as you know
22 the problem of explosion, and his problems, you know that
23 Dr. Nestmann related it to an explosion, don't you, sir?
24 Now you know that, don't you, sir?

1 A Yes. Dr. Nestmann has described it before as an
2 explosion.

3 Q Doctor, in point of fact, Mr. Willard wasn't even
4 in there when it exploded or whatever occurred, was he, sir?

5 A That's quite true, sir.

6 Q Yes. But Dr. Nestmann reports that he was,
7 doesn't he, sir?

8 A I don't believe he says that he was exposed to the
9 explosion.

10 Q Oh, that's exactly what he said in that line we
11 just read. Patient was exposed to the explosion as
12 previously described. That's exactly what he says, isn't
13 it, sir?

14 A He's saying that generically, sir.

15 Q Excuse me, Doctor. That is exactly what he's
16 saying that this patient was exposed to the explosion; isn't
17 that correct, sir?

18 A Yes.

19 Q Yes. And, Doctor, you know that because you
20 checked it when you saw where I was going at recess. I see
21 you nodding your head yes. I'd like the record to get that.
22 You know because you went back and looked at the report and
23 saw that he wasn't in the explosion, that he only came in
24 hours later, isn't that correct, sir?

1 A I have known that for 35 years, sir.

2 Q Fine, Doctor.

3 A Okay. I knew that in 1949, and I've known that
4 since. I've talked about it many times about Willard's
5 relationship to that run-away reaction.

6 Q All right. Tell me this, Doctor, you knew that
7 this report by Nestmann was submitted to the Commission in
8 '53 in which he says his psychoneurosis is related to the
9 explosion, like combat fatigue. Did you ever tell the
10 Commission that this statement of Dr. Nestmann was not true,
11 and that this man was not in the explosion, and that his
12 psychoneurosis could not be like combat fatigue? Did you
13 ever tell the Commission that?

14 A I didn't have to, sir.

15 Q All right, Doctor.

16 A I didn't have to.

17 Q Let's go on to this report, Doctor. This report
18 by Dr. Nestmann in 1953 states, does it not, sir, that on
19 the last page, the last paragraph, any psychoneurotic
20 individual does poorly under stress, whether this stress is
21 an explosion, whether it is front-line duty in the service,
22 or any other traumatic experience, makes no difference?
23 Isn't that what he said, sir?

24 A That is what he wrote at that time, sir.

1 Q Yes, Doctor. He did write that at that time, and
2 he related this, he said this man was a psychoneurotic who
3 reacted poorly to this explosion that he wasn't even in;
4 isn't that correct, sir?

5 A No, sir, it is not correct, sir.

6 Q Oh, Doctor, didn't he tell -- doesn't he say here
7 that this man reacted poorly to a stress of the explosion,
8 equating it to front-line duty?

9 A That is what -- that is what the sentence reads,
10 sir.

11 Q Yes, indeed, it does.

12 A Yes, it does.

13 Q But you know that Mr. Willard's problem came after
14 his exposure and developed sometime after his exposure, that
15 is nervousness; you know that, don't you, sir?

16 A I know that Mr. Willard wasn't present --

17 Q Excuse me, Doctor.

18 A -- at the time of the run-away reaction.

19 Q Read my question back to him, please.

20

21 (Question read.)

22

23 THE WITNESS: Would you read it again? I'm sorry.

24

1 Q (By Mr. Carr) Don't you, sir?

2 A I'm asking her to read it again, sir.

3

4 (Question read.)

5

6 THE WITNESS: I don't believe you said exposure,
7 sir, did you?

8 Q (By Mr. Carr) Yes. I said exposure, Doctor.

9 A It came as -- in relation to his exposure.

10 Q My question was, Doctor, it came -- his
11 nervousness developed at some time after his exposure, did
12 it not, sir?

13 A I'm not sure I understand the question. Exposure
14 to --

15 Q To the product of the run-away reaction.

16 A To the run-away reaction?

17 Q To the ICDD, sir.

18 A Well, he was still -- he was still working when
19 his complaints of nervousness occurred.

20 Q Doctor, my question is --

21 A He was still working.

22 Q -- my question is these complaints started after
23 the exposure, did they not, sir?

24 A During the exposure, sir, not after. During.

1 Q They occurred after he was first exposed, did they
2 not, sir?

3 A After he was first exposed, yes, sir.

4 Q Yes, Doctor.

5 A Yes.

6 Q He did not have complaints of nervousness prior to
7 the exposure, did he, sir?

8 A I don't know that.

9 Q Doctor, you do know that. Look at your records,
10 sir, and see if there's any statement in your 1953 report or
11 in your 1950 report, or your 1949 report, that he was
12 nervous prior to this episode, sir.

13 A No, I don't have any record of that, sir. No.

14 Q He states he became nervous after this exposure,
15 did he not, sir?

16 A Yes, sir.

17 Q And, Doctor, it was some months after the
18 exposure, wasn't it, sir, that he started having his
19 problems?

20 A I believe that's true, sir.

21 Q He didn't even notice the acne until six weeks
22 after the first exposure; isn't that correct, sir?

23 A I haven't referred to the 1949 report recently,
24 but that may be accurate, sir.

1 Q Well, it reports that he entered the building
2 several hours after the explosion, symptoms were first noted
3 by this patient about six weeks following his first
4 exposure, that's what it says, and followed by an aching
5 type of pain in the calf of his leg. That's in Exhibit 1694,
6 sir. It wasn't until mid August that he was even aware of
7 his comedones. After he had his first episode of pain in
8 the calves he experienced repeated bouts of such pain with
9 increased intensity with time. During the first part of
10 1948 the aching was so intense that he was unable to walk
11 and entered a hospital where he remained for 16 days. In
12 '49 he's complaining -- he complained of insomnia and
13 nervousness; isn't that correct, sir, since the
14 hospitalization?

15 A At the time we first examined him he complained of
16 insomnia and nervousness, yes.

17 Q Isn't what I read to you correct, sir?

18 A That is correct, sir.

19 Q And, Doctor, the report that Dr. Nestmann gave to
20 the Commission that this man was a psychoneurotic
21 individual, who all of his problems stemmed from an
22 explosion like in combat, simply borne out by the record
23 relating to Mr. Willard, is it, sir?

24 A I believe it is borne out by --

1 Q Doctor, is there anything in the record that
2 suggests this man was psychoneurotic?

3 A Yes, sir.

4 Q Before his exposure.

5 A Before, no.

6 Q Yes, Doctor.

7 A But in the 1953 report, yes.

8 Q Sir, is there anything to suggest that he was made
9 psychoneurotic by an explosion similar to combat?

10 A By an explosion?

11 Q Yes, Doctor.

12 A No, sir.

13 Q Because there wasn't an explosion, and even if
14 there was, he wasn't there when it exploded.

15 A That's quite true, sir.

16 Q He could not be reacting to stress of an explosion
17 as suggested by Dr. Nestmann, could he, sir? Answer that
18 question, please, Dr. Suskind.

19 A Yes, sir, he could be.

20 Q He could?

21 A Yes, sir.

22 Q He could be reacting to stress of an explosion
23 where he wasn't -- when he wasn't even there, and it didn't
24 explode?

1 A Yes, sir.

2 Q Doctor, how can you react to something that didn't
3 exist?

4 A May I answer the question?

5 Q Doctor, my question is how can you react to
6 something that doesn't exist.

7 A Okay. Dr. Nestmann refers to the explosion in a
8 generic fashion. He is not talking about the actual
9 incident. He's talking about the results of that incident.
10 He's talking about, and he knew what he was talking about,
11 he knew that he was talking about the materials of that so-
12 called explosion. And Mr. Willard was exposed to the
13 products of that run-away reaction. That is what Nestmann
14 is likely to mean. And I -- and also the fear, he is
15 reacting as in combat fatigue. Combat fatigue refers to a
16 state of psychoneurosis in which the combat person develops
17 a fear of the risk, the risk of combat. The fear of the
18 risk of combat. And that's what Dr. Nestmann is talking
19 about.

20 Q Doctor, I'm quite interested in the first part of
21 your answer where you say --

22 THE COURT: Mr. Carr, before you pursue that, is
23 this a good place to break?

24 MR. CARR: No, your Honor. I'd like to get this

1 point established.

2 THE COURT: Go ahead.

3 Q (By Mr. Carr) Where you say Dr. Nestmann said his
4 psychoneurosis is caused by the exposure to the material.

5 A I didn't say that.

6 MR. CARR: Would you read the first part of his
7 answer back please.

8 THE WITNESS: I said --

9 MR. CARR: Would you read the first part of his
10 answer back.

11

12 (Answer read.)

13

14 MR. CARR: Thank you.

15 THE WITNESS: That's what I meant, sir.

16 Q (By Mr. Carr) Yes, indeed. He was exposed to the
17 products of the run-away reaction to the materials, was he
18 not, sir? That's what you said, and that's what you meant,
19 isn't it, sir?

20 A Correct, sir.

21 Q Thank you, Doctor.

22 A And he had symptoms from that.

23 Q Thank you, Doctor. One of the symptoms that he
24 had from that was the psychoneurosis?

1 A No, sir, absolutely not.

2 Q Doctor, isn't that what followed his exposure to
3 the materials?

4 A It's the fear of that.

5 Q Doctor, did the psychoneurosis follow his exposure
6 to the materials?

7 A The psychoneurosis followed this man, as Dr.
8 Nestmann points out --

9 Q Doctor, my question is --

10 A -- combat fatigue, which is the fear.

11 Q Doctor --

12 A The fear of that problem.

13 Q You're not listening to my question.

14 A I am indeed, sir.

15 Q Psychoneurosis followed the exposure to the
16 materials of the explosion?

17 A The risks from the materials of that explosion,
18 sir.

19 Q Doctor, you're not answering my question.

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

22 THE COURT: Doctor, answer the question.

23 THE WITNESS: Yes, sir.

24 THE COURT: Answer the question as it is asked of

1 you, please.

2 THE WITNESS: Okay. Would you ask the question
3 again, please.

4 MR. CARR: Would you read the question to him
5 again, please.

6
7 (Question read.)

8
9 Q (By Mr. Carr) Did it not, sir?

10 A No, sir.

11 Q He was psychoneurotic before he was exposed to the
12 materials?

13 A I don't know, sir.

14 Q The psychoneurosis followed his exposure to the
15 materials, it came after his exposure to the materials of
16 the explosion, did it not, sir?

17 A It followed, but was not caused by.

18 Q Doctor, my question is in point of time, the
19 psychoneurosis came after his exposure to the materials in
20 the explosion, did it not, sir?

21 A After his exposure to that -- to those materials
22 in time.

23 Q Thank you, Doctor.

24 A Only in time, sir.

1 MR. CARR: That's all I need, your Honor.

2 THE COURT: We'll break until 1:15 for lunch.

3 Court is in recess.

4

5 (Lunch recess.)

6

7 THE COURT: Ladies and gentlemen, I may not have
8 told you earlier, we're going to break at 3:00 today, rather
9 than at quarter to five. So I may have told you earlier,
10 but I don't think I did. Mr. Carr, you may proceed.

11 Q (By Mr. Carr) Dr. Suskind, I think we established
12 just shortly before noon that Dr. Nestmann was referring to
13 the -- talking about the results of the exposure, that he
14 was talking about the materials of the so-called explosion,
15 and that he was exposed to the products of the run-away
16 reaction, and that was what Dr. Nestmann was likely to
17 mean. Do you recall that, sir, when he described the
18 psychoneurosis that Mr. Willard had?

19 A I do recall I said that.

20 Q Yes.

21 A But that was only part of it, though.

22 Q I understand that, Doctor. But that part -- we'll
23 explore the other part in a moment. What Dr. Nestmann was
24 saying then in your judgment was that this man, who you say

1 Dr. Nestmann knew what he was talking about, but the man he
2 was talking about was exposed to the products of the run-
3 away reaction, and after that exposure to that material
4 developed this psychoneurosis; correct, sir?

5 A In time, yes, sir.

6 Q And, Doctor, you know that there have been, not
7 just this man that has been diagnosed as having
8 psychoneurosis, or having nervousness, but that a
9 significant number of these men had similar problems; isn't
10 that correct, sir?

11 A I believe they did, sir.

12 Q And you also know Doctor, that all of these
13 problems according to your reports, all of these problems
14 connected with this nervousness and the psychoneuroses all
15 developed following the explosion, and for that matter
16 following the chloracne, the cutaneous lesions; isn't that
17 correct, sir?

18 A In time, sir, yes.

19 Q Doctor, well, in point of time these men, the 36
20 that you examined, 29 of the 36 developed problems, and of
21 those 36, 17 of them developed nervousness problems; isn't
22 that correct, sir?

23 A They did.

24 Q Doctor, was there a history of anything else,

1 anything else that they might have been exposed to or might
2 have been subject to that could account for the causation of
3 these psychoneuroses, any other materials that they were
4 exposed to that you're aware of, that could account for the
5 psychoneuroses and these nervousness problems developing at
6 the point of time that they developed?

7 A Yes, sir.

8 Q What other material or what other circumstances
9 were involved, sir?

10 A The circumstances were the fact that there was a
11 run-away reaction, there were people who became sick.

12 Q Doctor, that's the thing that you already said.

13 A May I finish, sir?

14 Q My question to you, sir --

15 A You said circumstances, and I will give you the
16 circumstances.

17 MR. CARR: Your Honor, will you ask the witness to
18 stop when I'm trying to ask him a question, clarifying it.

19 MR. HEINEMAN: Your Honor, may we approach the
20 bench on that subject?

21 THE COURT: Yes, you may.

22

23 (The following proceedings were had at the bench
24 out of the hearing of the jury:)

1 MR. HEINEMAN: Mr. Carr objects, he asks the
2 question, he says what other circumstances, sir. The man
3 gets about eight words out of his mouth, Mr. Carr doesn't
4 like what he's saying, so he objects to it. He starts
5 interrupting him.

6 THE COURT: Keep it down.

7 MR. HEINEMAN: Then he asks you for help, saying
8 the man is interrupting his question. Now the problem is he
9 interrupted the witness' answer and I object to it. I'd
10 like the witness to be able to explain the circumstances
11 that Mr. Carr asked for in the question.

12 MR. CARR: Mr. Heineman is ignoring my question,
13 which said what other materials other than materials in the
14 explosion, and what other circumstances other than the
15 incident could account for the psychoneurosis.

16 MR. HEINEMAN: Well --

17 MR. CARR: May I finish please. The witness is
18 relating this same circumstance. I've asked him for what
19 other circumstances, what other materials could they be
20 exposed to to account for these problems. That's what I
21 asked him.

22 MR. HEINEMAN: Could I have the court reporter
23 read the question back?

24 THE COURT: No. I heard it. I heard the answer.

1 Mr. Carr's account of it is correct. It was not responsive
2 to the question. It was repeating what he said before.
3 Your objection is overruled.

4

5 (The following proceedings were had in the
6 presence and hearing of the jury:)

7

8 Q (By Mr. Carr) Doctor, in case I didn't make it
9 clear in my question to you, sir, my question to you is what
10 other materials other than the materials in this incident or
11 what other circumstances other than this incident could
12 account for, to have caused the nervousness and the
13 psychoneuroses, sir?

14 A What I had attempted to say, sir, was that as a
15 consequence of this incident, as a consequence of this
16 incident --

17 Q Doctor, that's where I interrupted you. I want to
18 know what other circumstances or other materials. I know
19 about the consequences from this incident. You're trying to
20 tell me the consequences of this incident. Now exclude
21 that, Doctor. What I'm asking you, sir, other than this
22 incident, other than the materials involved in this
23 incident, what other materials or what other circumstances,
24 sir, could account for the nervousness or the neuroses?

1 A I am attempting to answer that question in terms
2 of circumstances, sir.

3 Q Okay. Let's do it one at a time, sir. Any other
4 materials that you are aware of that are in the record that
5 could account for these problems?

6 A I don't know. I can't answer that question.

7 Q My question, sir, are there any other materials.
8 You do know what's in the record. You made the record. Are
9 there any other materials in the record that you know of to
10 which these men were exposed that could have caused the
11 nervousness and the psychoneuroses?

12 A I cannot answer that question because you have
13 related it to cause, and I can't relate it to cause.

14 Q Doctor, my question is --

15 A You said cause, sir, and I can't accept that.

16 Q Doctor, my question is what other materials, other
17 than these materials, could have caused this nervousness?

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

19 Q Is it because you don't know of any other
20 materials --

21 A No, because you used the word "cause," sir.

22 Q Yes, Doctor, I am using the word cause because the
23 psychoneurosis was caused either by, as Dr. Nestmann said,
24 the materials to which they were exposed, or to the incident

1 itself. That's what Dr. Nestmann has said. I'm now
2 exploring with you, Doctor, what other causes could there
3 be, A, what other materials other than the material in this
4 exposure, B, what other circumstances, other than the
5 circumstances of this exposure, this incident, this
6 reaction. Now that's what I'm doing, Doctor. Now what
7 other materials do you know of that the men were exposed to
8 that could have caused these nervous problems,
9 psychoneuroses problems that these men all had, 17 of them
10 had?

11 A I can cite one, sir.

12 Q Please do, sir.

13 A This is one, and you have read it to me, where the
14 man indicated that his nervousness seemed to be caused by
15 niran. Niran is a rubber additive.

16 Q I don't recall the niran.

17 A Well, I do, sir. And it's in the record.

18 Q I'll accept that, Doctor. That's fine. Anything
19 other than the niran?

20 A I don't know, sir.

21 Q All right. Now what other circumstances, sir,
22 other than this incident are you aware of that's in the
23 record, sir, that could cause this nervousness or
24 psychoneuroses that these men had? Are there any other

1 incidents or circumstances that could have caused this,
2 other than the one in question?

3 A I cannot answer that either, sir, because I don't
4 know.

5 Q Doctor, is the answer that you don't know of any
6 other circumstances that could have caused it, or any other
7 incident that could have caused it?

8 A I cannot answer the question, sir.

9 MR. CARR: Your Honor, would you direct the
10 witness to answer that question.

11 THE COURT: Doctor?

12 THE WITNESS: Yes, sir?

13 THE COURT: The question has been clearly put.
14 You have to answer the question.

15 THE WITNESS: Would you repeat the question,
16 please?

17

18 (Question read.)

19

20 THE WITNESS: I don't know of any other incidents.

21 Q (By Mr. Carr) Thank you, Doctor. And, Doctor, so
22 far as your knowledge is concerned, other than the one
23 incident of the niran exposure, the materials to which these
24 gentlemen were exposed to, which preceded their onset of

1 neuroses was the 2,4,5-T and its contaminant; isn't that
2 correct, sir?

3 A These men who were referring to --

4 Q Would you answer that question, please, Doctor.

5 A Were exposed to 2,4,5-T and its contaminants, yes,
6 sir.

7 Q Is that a yes to my question, sir?

8 A Yes, I believe it is.

9 Q And, Doctor, the only circumstances that you're
10 aware of that would be related to or predated or preceded
11 their nervousness and psychoneurotic condition was the
12 incident and the circumstances surrounding the incident;
13 isn't that correct, sir?

14 A That I can't answer either, because --

15 Q Doctor, my question is so far as you know, and I
16 thought you just gave us the answer that this is the only
17 circumstance so far as you know, you have no knowledge of
18 any other incident or any other circumstances that could
19 have caused this psychoneurosis; isn't that correct, sir?

20 A I believe -- I believe I do, if I search my memory
21 for cause of psychoneurosis.

22 Q Didn't you just tell me, Doctor, that you knew of
23 no other circumstances or incident that could have caused
24 the psychoneurosis in these men that were involved in this

1 incident? Didn't you just tell us that, sir?

2 A If you're talking about industrial incident,
3 that's true.

4 Q Doctor, do you know --

5 A Industrial incident.

6 Q Doctor, do you know, do you have knowledge of any
7 incidents in these men's lives that caused their
8 psychoneurosis, that could have caused their psychoneurosis?
9 What incident, if any, do you have knowledge of that could
10 have caused it, sir?

11 A There are any number of persons --

12 Q Doctor, there are any number of causes of
13 neuroses. I'm asking you what is your knowledge in these
14 group of people's lives, in these men's lives that could
15 have caused their psychoneurosis, other than the incident in
16 question? I'm asking you about your knowledge.

17 A Are you referring to --

18 MR. HEINEMAN: Excuse me, Doctor, let me object.

19 Your Honor, objection. He interrupted the answer.

20 THE COURT: The objection is overruled.

21 THE WITNESS: Are you referring to 1779? Are you
22 referring to these people?

23 Q (By Mr. Carr) Doctor, you understand the question
24 that I'm asking you?

1 A No, I don't. I have to refer to specific people.

2 Q I'm talking about these men that you saw in 1953,
3 these men that Dr. Nestmann has seen and said has
4 psychoneuroses. Those are the men that I'm talking about,
5 sir. What incidents, other than this run-away reaction
6 incident was there in the lives of these men of which you
7 have knowledge, sir, that could have caused the
8 psychoneurosis?

9 A I can name one, sir.

10 Q Please do.

11 A Harold Young.

12 Q Yes.

13 A Harold Young.

14 Q What incident in his life could have caused the
15 psychoneurosis, sir, other than the incident in question?

16 A Okay. This was 1950 --

17 Q Doctor, my question --

18 A I'm talking about an incident, sir.

19 Q Yes.

20 A A specific incident.

21 Q Right.

22 A And please let me finish. He was as a result of
23 treatment, he had become hyperpigmented, and he didn't
24 realize how hyperpigmented he had become. This is 1950 now.

1 It's in West Virginia.

2 Q Doctor, let me interrupt for a minute. The
3 hyperpigmentation was caused by exposure to these materials,
4 was it not, sir?

5 A Let me tell you about the circumstances, though,
6 sir.

7 Q Was it not caused by the exposure to these
8 materials?

9 A Not necessarily. It could have been caused by the
10 treatment.

11 Q Doctor, did you not report that it was caused by
12 exposure to the materials?

13 A But I'm not talking about the hyperpigmentation,
14 I'm talking about the incident.

15 Q Doctor --

16 A Please let me finish.

17 Q Doctor, would you please confine yourself to
18 circumstances other than the incident in question.

19 A I will, sir.

20 Q Doctor, the hyperpigmentation was caused by the
21 incident in question.

22 A I will, sir, if you'll let me finish.

23 MR. CARR: Your Honor, would you instruct the
24 witness to let me finish my question?

1 MR. HEINEMAN: Objection, your Honor, he
2 interrupted the answer.

3 THE COURT: Doctor, please wait until the attorney
4 has finished the question.

5 Q (By Mr. Carr) Doctor, the hyperpigmentation was
6 caused by the incident in question, was it not, sir?

7 A No, sir.

8 Q It was not?

9 A It was one factor, sir.

10 Q Doctor --

11 A Only a few had hyperpigmentation, sir.

12 Q Yes, and he was one of the few that had it, wasn't
13 he, sir? Nothing else happened, he wasn't exposed to
14 anything else to cause the hyperpigmentation, other than the
15 materials, was he, sir?

16 A I don't know, sir. He was being treated --

17 Q Doctor, look at your report, and let's get that
18 established first.

19 A He was being treated for his --

20 MR. CARR: Your Honor, would you direct the
21 witness to look at his report.

22 THE COURT: Doctor, please follow the question.

23 Q (By Mr. Carr) Doctor, page 13 of your 1953 --

24 A I'm talking about page 10 on my 1950 report, sir.

1 Q Doctor, page 10 refers to Mr. Selby and Mr.
2 Willard. Page 13 refers to Harold Young.

3 A I'm sorry, sir, it's in the 1950 report.

4 Q 1950 report?

5 A Yes, sir, it is. It's on page --

6 Q Excuse me one minute. Are you talking about
7 Exhibit --

8 A It's on page 10.

9 Q Yes, Doctor. He, according to this report, and
10 according to your 1953 report, he developed chloracne, did
11 he not, sir?

12 A I'm reading on page 10, sir, and I'd like that to
13 be read. We all know he developed chloracne. I'm not
14 talking about his chloracne, I'm talking about the
15 hyperpigmentation and the fact --

16 Q Doctor --

17 A -- that he became emotionally disturbed --

18 Q Doctor -- your Honor, would you direct the witness
19 to let me ask him a question.

20 THE COURT: Doctor, please, I've asked you before.
21 Please follow my requests. Let the attorney ask his
22 question and then respond only to the question.

23 THE WITNESS: Yes.

24 Q (By Mr. Carr) Doctor, this man, Harold Young,

1 developed chloracne, did he not, sir?

2 A Among other things, he did, sir.

3 Q And he went to a local dermatologist, did he not,
4 sir, for X-rays -- X-ray management of his skin lesions,
5 sir.

6 A Correct.

7 Q And after several visits to the dermatologist his
8 skin became dark and remained a grayish-brown color for
9 about a year; isn't that right, sir?

10 A That is correct, sir.

11 Q And while he received peeling therapy from another
12 dermatologist, he developed this same hyperpigmentation
13 problem again, did he not, sir?

14 A Yes, sir.

15 Q This hyperpigmentation caused this man to go in
16 seclusion, did it not, sir?

17 A No, sir.

18 Q Doctor, look at page 9, if you would, sir. Your
19 very words, sir, quote, the hyperpigmentation has caused
20 this patient to go into seclusion. Dr. Suskind --

21 A There's an explanation for it, sir.

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

24 THE COURT: Doctor, we've gone through this three

1 times in the last half hour. Let the attorney ask the
2 question, please.

3 Q (By Mr. Carr) Doctor, the words, quote, the
4 hyperpigmentation has caused this patient to go into
5 seclusion are your words, are they not, sir?

6 A They are, sir.

7 Q And, Doctor, it also points out that this man was
8 a handsome man, active man before this hyperpigmentation
9 took place, and he developed a number of psychological
10 problems, things that he deeply resented following this
11 hyperpigmentation; isn't that correct, sir?

12 A No, sir.

13 Q It's not correct, sir?

14 A No, sir, it's not correct. It's not complete.

15 Q Doctor, I haven't read the entire report to you,
16 but haven't I read to you what this report says, among other
17 things?

18 A Paraphrased it, yes.

19 Q Is it true that, Doctor, that he was a handsome
20 man and quite proud of it, as you say on page 10?

21 A Yes.

22 Q Is it true that it caused him to have a condition
23 which he deeply resented and as a result has secluded
24 himself from most social activity? Is that also true?

1 A No, sir.

2 Q Doctor, isn't that what you said? Didn't I read
3 it to you, as a result has secluded himself from most social
4 activity?

5 A That's only part of it, sir. Why don't you read
6 the whole sentence?

7 Q I'll be glad to read the whole sentence, Doctor.

8 A Right from this man is -- from the melanoma, sir.

9 Q Let me read the entire paragraph.

10 A Okay, if you would, please.

11 Q Sure, Doctor, that you wrote in this exhibit.

12 "The interview revealed the presence of a disturbing
13 emotional problem." Is that correct so far?

14 A Right.

15 Q "This man is handsome and quite proud of it."
16 Correct, sir?

17 A That's what I wrote, sir.

18 Q "He also has strong racial prejudice."

19 A That's correct.

20 Q Isn't that correct also, sir?

21 A That's right.

22 Q "The melanoma has caused him to be mistaken for a
23 Negro, which he deeply resents, and as a result has secluded
24 himself from most social activity."

1 A That's correct, sir.

2 Q Doctor, is that what you wanted me to read, that
3 this man resented being mistaken for a Negro? Is that what
4 you wanted me to read, because that's what I omitted?

5 A Correct.

6 Q You wanted me to read that?

7 A That was in 1949, sir.

8 Q I understand that, Doctor.

9 A And there was --

10 Q It's not 1949 now, and I wished to omit that
11 statement, Doctor.

12 A But I think --

13 Q I avoided, I wished not to read that statement,
14 but you wanted it read, did you not?

15 A I did, because that points out the reason for his
16 psychoneurosis, sir.

17 Q He was caused to be psychoneurotic because of his
18 appearance, was he not, sir?

19 A Because of his fears because of his social
20 prejudices too.

21 Q Did it cause him to be psychoneurotic because of
22 his appearance, sir?

23 A Because of people's reaction to his appearance.

24 MR. CARR: Your Honor, would you instruct the

1 witness to answer my question?

2 THE COURT: Doctor.

3 THE WITNESS: I thought I had.

4 THE COURT: You've got to respond to the question
5 that was asked of you, not another question. Please
6 respond.

7 THE WITNESS: Would you read the question, please.

8

9 (Question read.)

10

11 THE WITNESS: No, sir.

12 Q (By Mr. Carr) What, other than this appearance,
13 caused him to be psychoneurotic, Doctor?

14 A The social reaction.

15 Q What caused the social reaction, Doctor?

16 A His hyperpigmentation, sir.

17 Q His hyperpigmentation caused the social reaction,
18 which caused the psychoneurosis; is that correct, sir?

19 A Which may have been responsible for his --

20 Q Is that correct, sir?

21 A Yes, sir.

22 Q And, therefore, the psychoneurosis was a direct
23 cause, right in line, was it not, sir, with his
24 psychoneurosis and the hyperpigmentation?

1 A That was one factor, sir.

2 Q Yes, Doctor, that was the factor which caused this
3 man -- was there anything else, other than the
4 hyperpigmentation, sir, that caused his psychoneurosis, sir?

5 A Yes.

6 Q What else, sir?

7 A His own prejudices at the time, sir.

8 Q Doctor --

9 A His own attitudes.

10 Q Indeed, Doctor.

11 A That's quite true, sir, and I think you've got to
12 face it, whether it's '49 or '86.

13 Q No question about that, Doctor, indeed we do have
14 to face that. And some people have to face it everyday of
15 their life, Doctor.

16 A You said it, sir.

17 Q Now, Doctor --

18 A I agree with you, completely.

19 Q Did Monsanto hire just unprejudiced people in
20 1949, or did they hire the run-of-the-mill people as they
21 come in, both prejudiced and unprejudiced?

22 A I have no idea, sir.

23 Q Doctor, indeed you do have an idea. It's in
24 Charleston, West Virginia. There are prejudiced people,

1 there are unprejudiced people in Charleston and Nitro, West
2 Virginia, just like there is in Belleville, just like there
3 is in East St. Louis. You know it's a fact, don't you, sir?

4 MR. HEINEMAN: May Counsel approach the bench?

5 THE COURT: Yes you may.

6

7 (The following proceedings were had at the bench
8 out of the hearing of the jury:)

9

10 MR. HEINEMAN: This is surely not conceivably
11 relevant whether Monsanto hires prejudiced people or
12 unprejudiced people.

13 MR. CARR: It is relevant, because, your Honor,
14 nobody is entitled to be a perfect person, and, therefore,
15 if one gets injured because he is an imperfect person, that
16 is not a defense that it was caused by the product which
17 acts upon a prejudiced person, and, therefore, the injury is
18 the same regardless of it. The causation was the material
19 that caused the hyperpigmentation.

20 MR. HEINEMAN: That's about as far reaching a
21 theory as I've ever heard about. This whole Nitro issue is
22 not relevant to the lawsuit, let alone what Monsanto's
23 hiring practices were.

24 MR. CARR: It is most certainly. It is relevant

1 to show what dioxin caused, which your company has denied
2 and covered up the effects of what dioxin can cause for
3 many, many years.

4 THE COURT: Two things. There's an old addage
5 that one takes a plaintiff as one finds them. I think
6 that's basically what you're saying here.

7 MR. CARR: That's correct.

8 THE COURT: This was opened up by your witness'
9 insistence on that part of it being read in the manner, I
10 might add, that was unresponsive to the question that was
11 being asked of him at the time. On the basis of both of
12 those grounds, your objection is overruled. You have long,
13 months ago, made your objection as far as the relevancy of
14 the Nitro incident. We covered it a long, long time ago.
15 So the objection is overruled.

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

19
20 MR. CARR: Kathy, would you read the last
21 question.

22
23 (Question read.)

24

1 THE WITNESS: Probably so, sir, yes.

2 Q (By Mr. Carr) Doctor, you know that the emotional
3 make-up and the prejudices for good or bad that are in all
4 of us go into make up each of us; you know that, don't you,
5 sir?

6 MR. HEINEMAN: Excuse me, your Honor, may Counsel
7 approach the bench again?

8 THE COURT: Yes, you may.

9
10 (The following proceedings were had at the bench
11 out of the hearing of the jury:)

12
13 MR. HEINEMAN: Your Honor --

14 THE COURT: Wait 'till he gets up here.

15 MR. HEINEMAN: Your Honor, the pursuit of this
16 entire thing is nothing -- it has nothing to do with the
17 merits of this lawsuit. It is designed to inflame members
18 of the jury. I object to it. I think it's an issue that we
19 must discuss very strongly. I would ask the Court for a
20 recess so that we can go into chambers and discuss this
21 question. It is a very serious problem to be raising these
22 issues in front of this jury.

23 MR. CARR: I didn't raise the issue, Counsel.

24 THE COURT: The objection is overruled. I've

1 already ruled on it. I think my ruling is correct. Your
2 objection is overruled. It has been more than adequately
3 covered at this conference at the bench. My ruling is that
4 it's not improper. The objection is overruled. I'll make
5 it a continuing objection to the line of questioning,
6 reserving all of your objections.
7

8 (The following proceedings were had in the
9 presence and hearing of the jury:)

10
11 MR. CARR: Would you read my last question again?
12

13 (Question read.)
14

15 THE WITNESS: In part, sir, yes.

16 Q (By Mr. Carr) Doctor, is it your belief that
17 Monsanto is entitled to expose to contaminants only those
18 people who are unprejudiced or are people who have biases
19 and prejudices also entitled not to be exposed to harmful
20 materials?

21 A I don't understand the question, sir.

22 MR. HEINEMAN: Your Honor, may Counsel approach
23 the bench?

24 Q (By Mr. Carr) It's so simple --

1 THE COURT: Yes, you may.

2

3 (The following proceedings were had at the bench
4 out of the hearing of the jury:)

5

6 MR. HEINEMAN: This is completely irrelevant, your
7 Honor. The question, to ask this witness' opinion as to
8 what Monsanto is or is not entitled to do is absolutely
9 irrelevant. Now this is ridiculous. Mr. Carr continues to
10 pursue this question. He's trying to raise some
11 inflammatory issue in front of the jury. I mean it's bad
12 enough that it's gone as far as it has, but he keeps
13 pursuing it and turning the knife in this issue in front of
14 this jury, and I object to it. Whether or not Monsanto is
15 entitled to do this or isn't entitled to do it, this witness
16 is not competent to say.

17 MR. CARR: But he has done so. He has implied, he
18 said, "Ahh, this person is prejudiced." He's implied,
19 therefore, it's just tough that he happened to get --

20 MR. HEINEMAN: That isn't what he said.

21 MR. CARR: Yes, indeed.

22 THE COURT: Okay. You are now repeating
23 objections. The other two times you came up here they were
24 new, they hadn't been raised before. You are now repeating

1 irrelevance and inflammatory objections. You've made it
2 before, in which I've also made as a continuing objection.
3 They are continuing. They are for this entire line of
4 questioning. Unless you have a new objection, don't -- I
5 notice also that after each of the questions in this line of
6 questioning there's been such an objection. Unless you have
7 a new objection and not a continuing objection, because I
8 don't want every question stopped for a minute or a couple
9 of minutes and have you come up to the bench for a
10 conference for something we've already done. So keep that
11 in mind in your future objections. As I've done before,
12 these objections are overruled.

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

16
17 MR. CARR: Would you read the last question again,
18 please.

19
20 (Question read.)

21
22 THE WITNESS: I think the question -- the answer is
23 very obvious. It's no, sir.

24 Q (By Mr. Carr) Monsanto is entitled to harm

1 anybody, whether they're prejudiced or unprejudiced; isn't
2 that correct, sir?

3 A I don't know how to answer that question. You use
4 the word "entitled."

5 Q The employer takes the employees in that condition
6 that they're found, they're subject to an examination, a
7 pyhsical, if they want a mental examination, and they take
8 those employees for good or bad as they are; isn't that
9 correct?

10 A Absolutely, sir. Absolutely.

11 Q Simply because this man is racially prejudiced is
12 no reason for him not to be able to say that his emotional
13 problems were caused by his -- his psychoneurotic problems
14 were caused by the hyperpigmentation, which was caused by
15 the chemical; isn't that correct, sir?

16 A I don't understand the question. It's a very long
17 one, sir. It has many different parts. Would you mind
18 repeating the question so I can take it apart.

19

20 (Question read.)

21

22 THE WITNESS: I didn't say that.

23 Q (By Mr. Carr) Could you answer that question,
24 please, sir.

1 A I don't know how to answer it, sir.

2 Q You can answer it yes, Monsanto, or you can answer
3 it no, Monsanto.

4 A Would you restate the question so I understand it,
5 sir, please.

6 Q Would you read the question again to him, please.

7

8 (Question read.)

9

10 THE WITNESS: He can say that if he wishes, sure.

11 Q (By Mr. Carr) Doctor --

12 A The answer was yes, he can say that if he wishes.

13 Q Doctor, isn't it appropriate that he should say
14 that, that his hyperpigmentation, if he is a prejudiced
15 individual, and the hyperpigmentation acts upon him as he
16 was the way Monsanto hired him, isn't he entitled to say;
17 "Hey, I'm psychoneurotic because of what Monsanto did to me
18 as a human being, as an entity, with my prejudices, with my
19 likes, with my dislikes?" Isn't he entitled to say that,
20 sir?

21 A If he wants to, yes, sir.

22 MR. HEINEMAN: Your Honor, excuse me, may we
23 approach the bench?

24 THE COURT: Yes, you may.

1 (The following proceedings were had at the bench
2 out of the hearing of the jury:)

3
4 MR. HEINEMAN: Now he's asking the witness to make
5 mortal judgments, legal judgments, what this man is entitled
6 to do or entitled not to do. That's not relevant.

7 MR. CARR: Oh, your Honor --

8 MR. HEINEMAN: This witness is not competent for
9 that.

10 THE COURT: I want to stop you right now. You are
11 repeating an objection you made before, and I asked you not
12 to do it. I have overruled it before. I am overruling it
13 now. This question is no different than the other question.

14 MR. HEINEMAN: It is different.

15 THE COURT: It is not. Objection is overruled.
16 Let's get back to the question.

17

18 (The following proceedings were had in the
19 presence and hearing of the jury:)

20

21 Q (By Mr. Carr) Doctor, you understand the reason
22 for that question is because you said that Harold Young was
23 prejudiced, and his psychoneurosis results from his
24 prejudice; isn't that correct, sir?

1 A No, sir.

2 Q What did his psychoneurosis result from, then,
3 sir?

4 A The psychoneurosis, as I understand it, in part or
5 altogether, and psychoneuroses are not due to just one
6 thing, sir, there are many factors, many factors.

7 Q Doctor, when you get back to it, would you answer
8 my question, sir?

9 A Yes, I will, indeed. He found himself in a
10 socially difficult situation. To him he was unacceptable.
11 Now that's a social situation.

12 Q And what caused --

13 A That's a social situation.

14 Q What caused him to be unacceptable in his eyes,
15 Doctor?

16 A In his eyes, the hyperpigmentation did.

17 Q Doctor, and what caused the hyperpigmentation?

18 A The treatment that he got.

19 Q And what caused the treatment that he got, Doctor?
20 Why did he get the treatment that he got?

21 A Well, he had chloracne to start with.

22 Q Yes, Doctor. And what caused the chloracne,
23 Doctor?

24 A The chloracne was associated with his exposure to

1 TCP.

2 Q Doctor, his psychoneurosis is related to the
3 circumstance in 1949, is it not, sir?

4 A Not altogether.

5 Q Doctor, I didn't say altogether, did I, sir? I
6 said it is related to the 1949 incident, is it not, sir?

7 A Remotely, yes.

8 Q Remotely?

9 A Yes.

10 Q The chloracne is treated by an ordinary type
11 treatment the dermatologists use, X-ray, and because of this
12 man's particular molecular make-up, X-rays on his skin,
13 maybe not on your skin, and maybe not on my skin, but the
14 way this man is made, the X-rays caused him to be grayish-
15 brown in color.

16 A Correct.

17 Q And that caused -- and the grayish-brown in color
18 caused the social problem, and that social problem caused
19 the neurosis, coupled with his prejudice; isn't that
20 correct, sir?

21 A I would say in part.

22 Q Well, what else is there involved?

23 A Well --

24 Q What have I omitted, Doctor?

1 A He was having problems at home.

2 Q Oh, Doctor, where's that?

3 A Well --

4 Q Where's that?

5 A He told us --

6 Q Problems at home not connected with his appearance
7 and his view of himself, Doctor?

8 A I don't know. I have no idea.

9 Q Doctor, why do you say it if you don't know? Back
10 to my question, please, sir. The social problem was caused
11 by a combination of the way he existed as a human being,
12 coupled with the grayish-brownish color; isn't that correct,
13 sir?

14 A The social problem was associated with some of
15 that, yes, sir..

16 Q It was caused by it, wasn't it, Doctor? Is there
17 any other cause mentioned in your report other than his
18 grayish-brownish color that caused his social problems and
19 caused his problems at home and caused all of his problems,
20 psychoneurotically speaking?

21 A Yes, the incidents that occur.

22 Q What incidents that occur, Doctor?

23 A The incidents that we've referred to. It happened
24 to be on a bus.

1 Q Doctor, that's all connected with his grayish-
2 brownish color, isn't it, sir?

3 A Yes, but --

4 Q Doctor --

5 A If the incident hadn't occurred, sir --

6 Q Doctor, will you get back to my question.

7 A If the incident hadn't occurred, he wouldn't have
8 reacted that way.

9 Q Doctor, would you get back to my question, sir.
10 The incident was caused by his grayish-brownish color,
11 wasn't it, sir?

12 A No, sir.

13 Q What other cause was there, sir?

14 A The incident was also caused by the social
15 prejudices of that era, sir, in West Virginia.

16 Q The social prejudices of that era are not so far
17 gone, they're still here in this era, sir. The question
18 that I'm asking you, Doctor, his social problems were caused
19 by the hyperpigmentation, the grayish-brownish color, were
20 they not, sir? As he was living --

21 A In part, sir.

22 Q As he was living as a human being at that time in
23 that society.

24 A In part, sir. In part.

1 Q What else caused the social problem, sir?

2 A As I just pointed out, the cultural attitudes that
3 existed in that --

4 Q Doctor, that's the culture that he was living in.
5 That's the fluid that he was swimming in. He would not have
6 had the problems in that culture were he not grayish-brown,
7 would he, sir?

8 MR. HEINEMAN: Object, your Honor, he interrupted
9 the answer.

10 THE COURT: Objection is overruled.

11 THE WITNESS: There were many questions there.
12 Would you repeat the question?

13 Q (By Mr. Carr) Doctor, he would not have had the
14 reaction on the bus and elsewhere were he not that color.
15 He would not have perceived these actions as being against
16 him.

17 A Probably not, sir.

18 Q Doctor, was the color, the grayish-brownish color
19 that caused it, when he went out in public, and he saw
20 people reacting to this particular grayish-brownish color;
21 isn't that correct, sir?

22 A That's true, sir.

23 Q And, Doctor, that was caused by the treatment that
24 he received on his particular kind of skin; isn't that

1 right, sir?

2 A Probably so, sir.

3 Q And, Doctor, the treatment was necessary and used
4 by competent dermatologists on others who had chloracne;
5 isn't that correct, sir?

6 A No, sir.

7 Q Oh, other dermatologists did not use X-ray
8 treatment?

9 A They did erroneously, unfortunately.

10 Q My question is didn't other competent
11 dermatologists use X-ray on the chloracne?

12 A Others did, but competent I would have to say I
13 don't know. I would question their competency.

14 Q Doctor, are you now blaming the dermatologists,
15 Doctor?

16 A I'm just saying that the dermatologists didn't
17 realize --

18 Q My question, Doctor, are you now blaming the
19 dermatologist? Do I have to go through and demonstrate to
20 you --

21 A I'm not blaming them, sir. It was inappropriate
22 treatment for chloracne.

23 Q Who knew that, Doctor? Did the dermatologist know
24 it?

1 A They could have realized it --

2 Q Did the dermatologist know it, Doctor?

3 A They could have realized it by doing it.

4 Q Could have realized by doing it, sir?

5 A Yes, sir. They could have realized their error --
6 first of all, X-ray didn't cure it, X-ray only made it
7 worse.

8 Q Doctor, who knew that? Who had experience in
9 treating chloracne at that time?

10 A There were a few people who did.

11 Q How many in the country, sir?

12 A Well, I don't know numbers, sir.

13 Q It would be very few, wouldn't it, sir?

14 A There would be a few.

15 Q Yes, Doctor, a few. Are you blaming these
16 dermatologists for using a treatment that only a very few
17 people might know would be inappropriate?

18 A I'm not blaming them, sir, no.

19 Q Doctor, let's pass on from the dermatologists.
20 His treatment was caused -- the treatment caused the
21 grayish-brownish color, didn't it, sir?

22 A In that man, yes.

23 Q And the treatment was called for because of his
24 chloracne, wasn't it, sir?

1 A It wasn't called for, sir.

2 Q Doctor, did the man make the decision to treat
3 himself with X-ray or did a doctor exercising his best
4 judgment at that time, whether for the good or for the bad,
5 did a doctor make the decision that this is chloracne, or
6 this is acne, I better treat it with X-ray? Did a doctor do
7 that?

8 A A doctor made the decision, yes, sir.

9 Q And the doctor was caused to make the decision
10 because he saw the condition in the man; isn't that correct,
11 sir?

12 A Yes.

13 Q And the condition in the man was caused by the
14 2,4,5-T and its contaminant, wasn't it, sir?

15 A The condition was associated with 2,4,5-T and its
16 contaminants.

17 Q The chloracne was not caused, sir. Haven't you
18 demonstrated time and time again that TCDD causes chloracne?
19 Didn't you write a paper saying chloracne - hallmark of
20 dioxin exposure?

21 A Mr. Carr, you said 2,4,5-T.

22 Q And its contaminants, Doctor.

23 A 2,4,5-T doesn't cause chloracne.

24 Q Doctor, did you hear me say 2,4,5-T and its

1 contaminants?

2 A You have to separate them.

3 Q Doctor, did you hear me say when you're exposed to
4 2,4,5-T? It has got the contaminant in it, you can't
5 separate it.

6 A Yes, you can.

7 Q Monsanto could have separated it, couldn't they,
8 sir?

9 A No. We have proven --

10 Q Now, Doctor, without all this byplay, sir, the
11 contaminant in the 2,4,5-T is what caused the condition that
12 caused the dermatologist to treat the condition; isn't that
13 right, sir?

14 A I assume that that's so, sir.

15 Q And the man's biological make-up, coupled with
16 that treatment is what caused the grayish-brownish color;
17 isn't that correct, sir?

18 A Would you repeat the question, please.

19

20 (Question read.)

21

22 THE WITNESS: Yes, I believe it is, sir.

23 Q (By Mr. Carr) And, Doctor, the grayish-brownish
24 color coupled with the man's prejudices caused his

1 psychoneurosis, did it not, sir?

2 A No, sir.

3 Q What caused it if it wasn't those two things, sir,
4 his grayish-brownish color and his prejudice? What other
5 factor caused it?

6 A The social response --

7 Q Doctor --

8 A -- of his friends.

9 Q -- that was a response, that was a result.

10 MR. HEINEMAN: Objection. Can the witness answer?

11 THE COURT: The objection is overruled.

12 Q (By Mr. Carr) That was a result of his color and
13 his prejudice, was it not, sir? The social response was a
14 result of his color and his prejudice combined?

15 A No, sir.

16 Q We haven't established that?

17 A No, sir.

18 Q All right. What caused the social result then,
19 Doctor, if it wasn't his prejudice coupled with his color?

20 A The social response, sir, and please let me
21 finish, the social response to this man unfortunately at the
22 time was the result of a cultural attitude. Cultural
23 attitude. And his prejudices had nothing to do with it.
24 Nothing to do with the cultural response. His prejudice was

1 involved in how he reacted to that --

2 Q And that caused the neurosis and that's what my
3 question is aiming at, Doctor.

4 A Let me finish, sir. The combination of the fact
5 that he had prejudices and there were social responses which
6 he resented, the combined circumstance played a role in his
7 neurosis.

8 Q Doctor, I'll certainly accept that, and,
9 therefore, the circumstances in question, the incident was
10 responsible for, coupled with these other problems, the
11 attitudes of society, his own attitudes, his biological
12 make-up, the treatment that he got caused by his
13 psychoneurosis; isn't that correct, sir? They were all
14 factors which added together caused his neurosis; isn't that
15 correct, sir?

16 A No. There was a sequence of events, sir.

17 Q Doctor, isn't that what you do when you have a
18 sequence of events, you add things together?

19 A It's not additive. Sequence doesn't mean
20 addition, sir.

21 Q Doctor, these events combined to cause the
22 psychoneurosis, did they not, sir?

23 A The events led to the psychoneurosis, yes, sir.

24 Q Doctor, it is, therefore, an incident that is

1 associated with the circumstances, but I asked you to give
2 me psychoneuroses cases that were not connected with, that
3 were not associated with this circumstance of this 1949
4 autoclave reaction. Now, sir, please name me, if you can,
5 any psychoneurosis in these men, one or more, that was not
6 associatd with the circumstance in question, sir.

7 A We only examined those people --

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

9 A I said we only examined those people who had
10 chloracne.

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

13 THE COURT: Doctor.

14 THE WITNESS: Yes, sir.

15 THE COURT: Please answer the question. You have
16 to give an answer that responds to the question and not an
17 answer that's not related to it.

18 THE WITNESS: Thank you. Would you read the
19 question, please.

20

21 (Question read.)

22

23 THE WITNESS: I don't know of any case other than
24 those we examined, and those that you have presented to me,

1 sir.

2 Q (By Mr. Carr) Then you know of no cases other
3 than these that are associated with the incident, no
4 circumstances, sir, other than the incident that could have
5 caused the psychoneurosis in these men?

6 A I haven't looked for them, sir.

7 Q Sir?

8 A I haven't looked for them.

9 Q Doctor, is an answer to my question that you have
10 no knowledge of any circumstance other than this '49
11 reaction that could have played a role in causing these men
12 to become neurotic?

13 A My answer is that I only know these cases which
14 you have presented to me, sir.

15 MR. CARR: Your Honor, please direct the witness
16 to answer my question.

17 THE WITNESS: Well, I am.

18 THE COURT: Doctor, you're not. The answer was
19 not responsive to the question. Please listen to the
20 question again and respond to the question that was asked of
21 you and not something else. Could you read the question
22 back one more time?

23 MR. HEINEMAN: Your Honor, may Counsel approach
24 the bench?

1 THE COURT: Yes, you may.

2

3 (The following proceedings were had at the bench
4 out of the hearing of the jury:)

5

6 MR. HEINEMAN: Your Honor, I'd like to object.
7 That answer was directly responsive to the question.

8 THE COURT: No, it was not. He was asked whether
9 he knew of any. He gave an explanation as to why he did not
10 know of any others, and that being that he hasn't looked for
11 any others. That may be a reason for an answer that he
12 doesn't know of any others, but it is not in answer to the
13 question of do you know of any others. It's just typical of
14 what he's been doing throughout this. He was asked does he
15 know of any others, for his knowledge or lack of knowledge,
16 rather in answering the question about whether such
17 knowledge exists. It was not at all responsive to the
18 question.

19 MR. HEINEMAN: Obviously I disagree with the
20 Court's interpretation. The answer in my opinion was
21 responsive to the question. I object to the Court's
22 instruction of the witness.

23 THE COURT: Objection is overruled.

24

1 (The following proceedings were had in the
2 presence and hearing of the jury:)

3

4 Q (By Mr. Carr) Would you answer the question,
5 please, Dr. Suskind.

6 A I don't know of any other cases except those we
7 discussed, sir.

8 Q Doctor, that isn't my question. My question is do
9 you know of any other circumstance that could have caused
10 the psychoneuroses in these men, other than the circumstance
11 of this autoclave reaction?

12 A I'm not sure I can answer the question, sir.

13 Q Do you have knowledge of any other circumstances
14 that could have caused any one of these men to become
15 neurotic other than the circumstances of the autoclave
16 reaction?

17 A If the Court will permit me, if I looked for them,
18 sir, I could answer the question. If I looked for them.

19 Q Doctor, I'm asking you as to your present
20 knowledge. You suggested to this jury when I started on
21 this line of cross examination that there were other
22 circumstances that caused these men to be neurotic. I wish
23 to establish, as you know, Doctor, that you don't know of
24 any other circumstances.

1 You gave us one that you said was a circumstance
2 not connected with the incident. Now I'm asking you, sir,
3 do you know of any other circumstances that could have
4 caused these men to become neurotic other than their
5 connection with this incident?

6 Now just tell me whether you have knowledge. If
7 you do know of some other circumstances, then tell me what
8 they are. If you don't know of any other circumstances, for
9 whatever reason you don't know of any other circumstances,
10 you haven't read it, you haven't looked for it, then tell
11 me, sir, that you don't know of any other circumstances
12 other than this incident that could have caused these men to
13 become neurotic.

14 A I can answer that question, sir. From the work
15 I've done, I don't know of any other.

16 Q All right.

17 A From the work I've done.

18 Q Thank you, Doctor. Then we have either the
19 incident itself caused the men to become neurotic, so far as
20 you know, or the materials that were involved in the
21 incident caused the men to become neurotic according to Dr.
22 Nestmann; is that correct, sir?

23 A Would you read the question back.
24

1 (Question read.)

2

3 THE WITNESS: I would say no, sir.

4 Q (By Mr. Carr) How is it incorrect, Doctor?

5 A It's incorrect because I believe that when Dr.
6 Nestmann compares, in Mr. Willard, for example, the
7 psychoneurosis to combat fatigue, which we went into
8 earlier, what he was saying was that these -- this man at
9 least developed a fear of the, of what might happen, a fear.
10 This is an anxiety neurosis.

11 There are 29 different kinds of neuroses, and Mr.
12 Willard had a kind of chronic anxiety neurosis, the fear of
13 his becoming ill. For example, he knew that his father had
14 died of a stroke in his '40's. He knew that his brothers,
15 one brother died of a -- of a coronary occlusion at age 46
16 and another at 68, and he was fearful. He was fearful that
17 this circumstance might produce heart disease. And that was
18 an anxiety reaction, sir.

19 Q That was thereabout a circumstance that led him to
20 believe that it might cause heart disease?

21 A I can tell you what that was. Earlier when we
22 examined these people in '49 and '50 they were ill. They
23 had problems. We described them. Those people who
24 developed psychoneuroses, anxiety neuroses, some of their

1 fears -- their fears didn't go away. They continued to have
2 those fears. So they had aches and pains and they had
3 nervousness and Mr. Willard complained of heart disease, and
4 I think Dr. Nestmann was saying that as in combat fatigue
5 they had -- they had fears of the risks that the original --
6 the original incident might have been responsible for.

7 Q Well, Doctor, then their psychoneuroses was
8 associated with the incident because their fear was caused
9 by the incident; isn't that correct, sir?

10 A The fears were related to the incident, yes.

11 Q Doctor, and it wasn't an explosion that caused
12 these men to be fearful, was it, sir?

13 A Well, I don't believe there was an explosion, sir.

14 Q It wasn't an explosion that caused these men to be
15 fearful, was it, sir?

16 A No.

17 Q It was what happened to their body following their
18 exposure that caused them to be fearful, wasn't it, sir?

19 A That happened to some of them, especially right
20 after the incident, sir, yes.

21 Q Doctor, it was what happened to all of them, the
22 original four that you saw and 29 out of the 36 that you saw
23 in '53, that's what put the fear in them, isn't it, sir?

24 A No, sir.

1 Q Well, what is it -- what is it that you just
2 explained to us, sir, that put the fear in them? Didn't you
3 just tell us it was what happened to them, what happened to
4 their bodies that caused them to be fearful? Didn't you
5 just tell us that, Doctor, or am I imagining that?

6 A No, I said that, sir.

7 Q All right. Doctor, that's what I said.

8 A Hold it, sir. Not in 1953, sir. In 1953 there
9 were a few, and we cite Willard as one of them, who was a
10 continuous complainer and who was psychoneurotic. We only
11 cited him and some others, but mostly him. I have referred
12 to that description of his psychoneurosis on a number of
13 occasions, and it's not different from this. It's not
14 different from this. As a matter of fact, this is dated May
15 4, 1955, and our examination was --

16 Q 1953. Doctor, it's 1953.

17 A I'm sorry, '53.

18 Q Yes.

19 A I'm sorry. Thank you. And our examination was in
20 the middle of April in 1953. So what we were doing
21 essentially was seeing the same thing.

22 Q And that's fine, Doctor. How was it caused in
23 him? It was caused by fear, wasn't it, Doctor?

24 A I believe he had some fear, sure.

1 Q And the fear was caused by what happened to his
2 body, wasn't it, sir?

3 A Originally.

4 Q Well, Doctor, I don't care whether it's originally
5 or finally. The fear that that man had in him was caused in
6 him by what happened in his body.

7 A Back in 1950, '49.

8 Q Back in 1949, back in 1950, whenever it happened.
9 The fear that was caused to him was caused by what happened
10 to his body, wasn't that correct, sir?

11 A I believe that was part of it, plus the fact --

12 Q Well, what else, Doctor, what other things caused
13 his fear, other than what happened to his body?

14 A I was describing his fear of heart disease, sir.

15 Q That's something that happened to his body. He
16 worried about is he going to get heart disease.

17 A That was not the result of the incident, sir.
18 That was a fear because he had a family history of heart
19 disease and stroke.

20 Q Doctor, shouldn't he have a fear of heart disease
21 if he's got a history of heart disease in his family?
22 Shouldn't he have a fear?

23 A But that has nothing to do with the incident.

24 Q Excuse me, Doctor. I suggest to you it has

1 everything to do with it. Hasn't he got the right to have a
2 fear if he's got a family history of heart disease? Hasn't
3 he got the right to have that fear, Doctor?

4 A I cannot accept the word "right," sir, because
5 there's no such thing as right.

6 Q Isn't it a consequence of a family history of
7 heart disease, isn't it a consequence that you too will have
8 that fear that perhaps it's going to happen to you?

9 A Yes.

10 Q And, Doctor, when you have that kind of history
11 you know that it takes less trauma, less exposure to toxic
12 substances, less other things to cause heart disease in you
13 than it does in perhaps somebody that has no family history;
14 isn't that also true?

15 A No, sir.

16 Q Oh, in what way is it false?

17 A Well, you know, I'm not altogether sure that I
18 understand what you're associating this with.

19 Q Doctor, you know exactly what I'm saying.

20 A Would you read the question, please, the first
21 question.

22

23 (Question read.)

24

1 THE WITNESS: Absolutely not. That's not so, sir.
2 There's no proof of that at all in all studies that have
3 been done.

4 Q (By Mr. Carr) Doctor, is it a belief that people
5 have?

6 A What is a belief that people have?

7 Q As I stated, that exposure to toxic substances, to
8 trauma, to things of this sort, can cause heart disease?

9 A No. It's -- if it is, it's an erroneous belief,
10 sir.

11 Q Whether it's erroneous or not is immaterial to me.
12 It caused a fear in this man, did it not, sir?

13 A No, sir.

14 Q What caused the fear then, sir? What was he
15 afraid of? Was he afraid of dying of a heart attack because
16 he was exposed to these substances? Was that his fear?

17 A He was afraid of dying of a heart attack because
18 he had a family history, sir.

19 Q And not associated with this substance, sir?

20 A The family history wasn't associated with it.

21 Q Doctor, did he have the neurotic condition before
22 he was exposed to the substance or not, according to your
23 records? Let me answer it, Doctor. It was stated on page
24 five that the nervousness in all of these individuals came

1 up after the exposure to the substance. That's what you
2 said in 1953; isn't that right, sir?

3 A That's what we were told, yes.

4 Q So his nervousness, his fear came up after his
5 exposure to the toxic substances; isn't that right, sir?

6 A His nervousness, yes.

7 Q And Dr. Nestmann even described it as being
8 exposed to toxic gases, didn't he, sir?

9 A Yes, I believe that he does have that kind of
10 description.

11 Q So this man's fear of heart disease came up, his
12 neurosis came up after his exposure, didn't it, sir?

13 A In time, sir, yes.

14 Q In time, that's what I'm talking about. After is
15 in time, isn't it, sir? Could I have an exhibit marked
16 174B-A?

17

18 (Plaintiffs' Exhibit 174B-A was marked for
19 identification by the court reporter.)

20

21 Q (By Mr. Carr) Doctor, you recognize what's been
22 marked 174B-A as a blow-up of Plaintiffs' Exhibit 174B?
23 The identification is right there, Doctor. You're looking
24 at the wrong place, Doctor. Look up here. Do you recognize

1 it as a blow-up of Plaintiffs' Exhibit 1748?

2 A Yes.

3 MR. CARR: I offer 1748-A into evidence, if it
4 please the Court.

5 THE COURT: Any objection?

6 MR. HEINEMAN: It's this thing?

7 MR. CARR: Yes.

8 MR. HEINEMAN: Your Honor, may we incorporate the
9 same objection that we made with respect to this document
10 that we did before?

11 THE COURT: Sure. I'll incorporate all arguments
12 on it. It's admitted over objection.

13 THE WITNESS: There we are.

14 Q (By Mr. Carr) Doctor, of those persons, of the 36
15 that you saw in 1953, of those persons that died according
16 to the death certificates that we have up to the present
17 time, how many of those people died of heart disease or
18 something that's been described as circulatory disease which
19 could well be heart disease? And, Doctor, the man that died
20 of heart disease at age 42, at age of 40.5, at age of 35, at
21 age of -- I'm sorry, I'm reading the wrong column. I'm
22 reading their life expectancy. I apologize. Died of heart
23 disease at the age of 48, 48, circulatory disease at 75,
24 heart disease at 42, heart disease at 54, heart disease at

1 47, heart disease at 43, heart disease at 45 and at 69;
2 isn't that correct, sir?

3 MR. HEINEMAN: Excuse me, your Honor.

4 THE WITNESS: I don't see a 47, sir.

5 MR. HEINEMAN: Excuse me.

6 THE WITNESS: I see the numbers --

7 MR. CARR: Did I say 47?

8 THE WITNESS: Yes. That's all right. Whatever it
9 was.

10 MR. CARR: 67.

11 THE WITNESS: 67.

12 MR. HEINEMAN: That's what it was.

13 Q (By Mr. Carr) Isn't that correct, sir?

14 A Yes.

15 Q Doctor, would it be reasonable to say that there
16 are no other causes of death other than the cancer on these
17 death certificates; isn't that correct, sir?

18 A I don't know, sir. I haven't seen them.

19 Q On this chart, Doctor.

20 A You said death certificates, and let's stick to
21 that. I haven't seen the death certificates. There could
22 have been other causes too.

23 Q Doctor, you have seen the death certificates
24 because we went through them when we made this board.

1 There were two other causes, one was Steele, a neurotic, who
2 committed suicide, a psychoneurotic, got psychoneurotic
3 after that, and committed suicide, and the other, sir, was a
4 man that was killed in an automobile-train collision.

5 MR. HEINEMAN: Objection.

6 Q (By Mr. Carr) Those are the deaths, sir.

7 MR. HEINEMAN: Objection, your Honor. May Counsel
8 approach the bench?

9 THE COURT: Sure.

10

11 (The following proceedings were had at the bench
12 out of the hearing of the jury:)

13

14 MR. HEINEMAN: I don't believe we've had any
15 evidence that Steele was a psychoneurotic. I object to that
16 portion of the question.

17 MR. CARR: I'll be glad to change that. I will be
18 glad to change that.

19 MR. HEINEMAN: But why was it said in the first
20 place, when you know the evidence isn't in there?

21 THE COURT: Objection is sustained.

22

23 (The following proceedings were had in the
24 presence and hearing of the jury:)

1 Q (By Mr. Carr) Doctor, with regard to Mr. Steele,
2 we have no report on Steele from Dr. Nestmann, have we, sir?
3 Do we, sir?

4 A I haven't seen it.

5 Q But we do have your report which --

6 A In the exhibits.

7 Q We do have your report which said he had
8 nervousness following the accident; correct, sir? Page 9 of
9 Exhibit 1701, Doctor, your 1953 report.

10 A He had a history of nervousness. A history.

11 Q Yes, Doctor, indeed. Following the incident?

12 A Right.

13 Q And not before; correct, Doctor?

14 A Yes.

15 Q And this man committed suicide, didn't he, sir?

16 A I don't know.

17 Q Doctor, of the death certificates that you've seen
18 of the men, of the 36 that have died subsequent to their
19 exposure, it's been cancer or heart disease, hasn't it, sir?

20 A No. What I was referring to is the other --

21 Q Excuse me, Doctor, could you answer my question,
22 please, sir.

23 A No, sir.

24 Q What other causes of death have we had of these

1 36, sir, other than cancer or heart disease?

2 A On the --

3 Q And other than the accident and the suicide.

4 A On the death certificates there are usually
5 secondary causes.

6 Q Excuse me, Doctor.

7 A And I haven't seen that.

8 Q We went through the death certificates, Doctor.
9 You looked at each of them. You agreed at the time the
10 cause of death on the death certificates on these men was as
11 stated here, Doctor.

12 A Those were listed as the primary cause, sir.

13 Q Doctor, I don't care what it was listed.

14 A I do.

15 Q Do you agree this was the cause of death?

16 A It was the primary cause given, sir.

17 Q Fine with me, Doctor. The primary cause of death
18 were these conditions, cancer and heart disease; correct,
19 sir?

20 A That's what was listed, and that's how you have it
21 listed, sir.

22 Q Now, Doctor, would you say that a fear in Mr.
23 Willard that he might die of heart disease would be
24 reasonable?

1 A No, sir, because our findings on Mr. Willard were
2 negative.

3 Q All right, Doctor. Your Findings on all these
4 people were negative as far as heart. You didn't diagnose a
5 single one of them as having any heart problems when you saw
6 them in 1953, did you, sir?

7 A We didn't do ECG's on these people, sir.

8 Q Then why do you say you didn't find it in Mr.
9 Willard, sir?

10 A In 1979 we didn't find it in Mr. Willard, sir.

11 Q Doctor, we're talking about fears that developed
12 in 1953, 1949 and 1950, aren't we, sir?

13 A You gave me -- you gave me -- we're talking about
14 causes of death, and Mr. Willard.

15 Q Doctor, did you find -- no, we're talking about
16 his fear, Doctor.

17 A Okay. Fears which would lead to death due to
18 heart disease?

19 Q Oh, no, Doctor. I'm not saying the fear causes
20 the heart disease. Did you believe that I said fear causes
21 heart disease? I'm suggesting to you, Doctor, that this
22 exposure, either the materials caused the neuroses, or the
23 incident itself caused the neuroses is what I'm suggesting
24 to you, that you have said, and Dr. Nestmann has said; isn't

1 that correct, sir?

2 A I have said it was the circumstance, yes.

3 Q That caused it; correct, sir?

4 A That might be responsible for their anxiety.

5 Q Doctor -- oh, is the nervousness now something
6 different than the neurosis?

7 A No, it isn't. I called it a few minutes ago --

8 Q The neuroses, the nervousness, the anxiety, was
9 caused by in these men what happened to them at the time of
10 and following the incident when they were exposed to the
11 2,4,5-T and its contaminant; isn't that correct, sir?

12 A No, sir.

13 Q How is it incorrect, Doctor?

14 A It's incorrect because they feared what might
15 happen to them.

16 Q Doctor, isn't that what I said?

17 MR. HEINEMAN: Objection, he interrupted the
18 answer.

19 THE WITNESS: I don't think you said it that way.

20 THE COURT: The objection is overruled.

21 Q (By Mr. Carr) I'll accept that statement. It was
22 their fear of what was going to happen to them that caused
23 the neurosis; correct, sir?

24 A That is associated with the neurosis, yes.

1 Q What caused the fear, Doctor?

2 A As we said before, the fear was stimulated by the
3 presence in 1949 and '50 of illness.

4 Q Yes.

5 A And they feared that going back in to the plant or
6 working in that plant might have an adverse effect on them.

7 Q Doctor, they continued to have that fear even when
8 they didn't work in the place where the 2,4,5-T was made,
9 didn't they?

10 A Yes, they did.

11 Q They continued to have it, and that fear was
12 caused by the incident, wasn't it, sir?

13 A It was caused by the circumstance of the incident.

14 Q Yes. Thank you, Doctor.

15 THE COURT: Mr. Carr, is this a good point to
16 break?

17 MR. CARR: Yes, your Honor.

18 THE COURT: Ladies and gentlemen, we, as I told
19 you before, are going to break for the day at this point in
20 time. We will resume again Monday at 9:30. I would remind
21 you as I do on any overnight break, you're not to read,
22 listen to or watch anything about this case in particular or
23 subject matter in general in any of the media, print or
24 electronic. Thank you for your attention and cooperation

1 this week. Have a good weekend. We'll see you Monday
2 morning. Court is adjourned.

3 Gentlemen, could I see you for a minute?
4

5 (The following proceedings were had in chambers
6 out of the presence of the jury:)
7

8 MR. CRAVEN: Before we get into the two motions
9 that have been tendered since the 25th of February, we would
10 make a Motion for Mistrial based on what we consider to be
11 some outrages in the courtroom this afternoon.

12 We would like the Court to make available to us
13 a -- a copy of the audio tape, because in many respects the
14 record itself perhaps can't do justice to that which has
15 happened. But in his abuse and examination of Dr. Suskind,
16 Mr. Carr has absolutely gone beyond the bounds. He has
17 suggested in front of the jury, without any interference by
18 the Court, that Monsanto could have had a mental examination
19 of its employees and excluded people with prejudices, they
20 hired people with prejudices.

21 He has resorted to some things that I'm sorry to
22 have to say this, but apparently we're trying a different
23 case. He is just abusing Dr. Suskind beyond any semblance
24 of reason, and then the final straw is that Mr. Carr can sit

1 there and make these on-going speeches in the form of
2 questions, and Mr. Heineman was ordered not to even -- he
3 can't make a speaking objection. Then he was ordered not to
4 approach the bench anymore with objections.

5 THE COURT: No, that's not correct. With repeats
6 of the same objections.

7 MR. CRAVEN: Judge, that whole scenario was Mr.
8 Carr, with no objections sustained, was just doing his thing
9 in front of that jury, and the bottom line was to suggest to
10 the jury, which is biracial, that Monsanto is in favor of
11 prejudice. Now that's simply inappropriate for this kind of
12 a trial or any trial. That's precisely what he did with, we
13 think, malice and forethought. That's the part I hate to
14 say, because that isn't an issue in this case, or any case,
15 but he injected it in this case. He did irreparable damage
16 in front of that jury, and he did it intentionally.

17 We make a Motion for a Mistrial because of that
18 conduct. We would like a copy of the audio tape for future
19 purposes because the cold printed record can't show that Mr.
20 Carr stands in front of the witness, yells at the witness,
21 interrupts the witness, walks on his answers, makes
22 oratorical speeches in the form of questions, and then
23 suggests that we hired people with prejudice when we could
24 have excluded them with mental examinations. That's

1 outrageous.

2 Let me just go ahead and touch on all the rest of
3 it.

4 MR. CARR: No, I'd like to reply to that first.

5 THE COURT: I'd prefer to do it one at a time. It
6 would be easier for me to follow.

7 MR. CRAVEN: We ask for two things. We would like
8 a copy of the audio tape, number one, and we will pay
9 whatever expenses. We will make copies under whatever
10 safeguards the Court wants to impose upon us, but we would
11 like a copy of that tape. And number two, we want a
12 mistrial because of the prejudice that went on in that
13 courtroom this afternoon that has gone on continuously, I
14 might say.

15 MR. CARR: Your Honor, in response to the two
16 statements Counsel has made, suggestions, or motions, as far
17 as the video tape is concerned, I don't know that there --
18 is there a video tape?

19 THE COURT: There's audio. There's no video.

20 MR. CRAVEN: I said audio.

21 MR. CARR: Oh, I thought you said video. To me I
22 don't see that it makes much difference one way or the
23 other. It isn't appropriate to make it part of the record.
24 I suppose it can be, but I haven't researched the

1 proposition, and I would ask for leave to respond to that
2 after I've had an opportunity to determine what is
3 appropriate under the circumstances. It may be perfectly
4 proper. It may be improper. I wish not to get into a
5 position of disagreeing until I know to what I speak on the
6 point.

7 As far as the major point that they're making, a
8 Motion for Mistrial, it's suggesting that I accused Monsanto
9 of hiring prejudiced people. It's absurd on the face of it.
10 My line of questioning, perhaps Counsel couldn't hear
11 since --

12 MR. CRAVEN: I heard very well, Mr. Carr.

13 MR. CARR: -- since my back was to him.

14 MR. CRAVEN: Mr. Carr would be --

15 MR. CARR: May I finish, Mr. Craven?

16 MR. CRAVEN: Well --

17 MR. CARR: Your Honor, would you tell Mr. Craven
18 to let me finish?

19 THE COURT: Go ahead, Mr. Carr.

20 MR. CARR: My line of questioning was aimed at
21 showing that anybody and everybody takes the plaintiffs as
22 they find them. The suggestion of the witness was that Mr.
23 Young was prejudiced. The implication being to the jury
24 that this prejudiced individual somehow or another was not

1 entitled to the same protection, the same rights under the
2 law, that an unprejudiced person is.

3 My question, as the Court is aware, and as Counsel
4 is aware, because he's at the bench, not Counsel Craven, but
5 Mr. Heineman, my line of questioning was aimed at showing
6 that the employer takes the employee as they find him,
7 whether they're prejudiced or unprejudiced.

8 In Nitro, West Virginia, as the witness himself
9 pointed out, a prejudiced community, where this plant was
10 located and the people there are subject to those
11 prejudices. The witness suggested that somehow or other
12 because this Harold Young reacted to that prejudice in that,
13 what he could consider an unreasonable way, that somehow or
14 other his psychoneurosis doesn't count, because it was a
15 product of his own prejudice living in an environment that's
16 prejudiced.

17 For the sake of cross examination I accepted that
18 as true and then by further questions pointed out that the
19 employer doesn't screen their employees. They take them as
20 they find them as every employer does, and that to say
21 simply because somebody is prejudiced that they're not
22 entitled to protection of the law is an absurdity. That was
23 the line of questioning, that was the intent of the
24 questioning.

1 Then it didn't even enter my mind, quite frankly,
2 to suggest that Monsanto hired prejudiced people, or that it
3 was obligated to hire unprejudiced people. The race issue
4 was injected into the case unnecessarily by the witness. I
5 had avoided when I went through Exhibit 1701, the 1953
6 report, from the beginning, I avoided carefully the words
7 relating to Negro, and this exhibit 1701 was never passed to
8 the jury. The Witness Suskind up until today also avoided
9 the problems, the social problems of Harold Young as being
10 associated with his perception by the community that he was
11 a Negro and his reaction thereto. I avoided it carefully
12 because I wished not to offend any jurors, and wished not to
13 have race to have anything to do with this case. But the
14 witness insisted that I read, as a matter of fact, insisted
15 vehemently that I -- I first directed his attention to page
16 nine, where all the entire problems were set out. He
17 insisted on going to page ten. Then I read around the
18 racial prejudice, and the Negro description in the exhibit,
19 and the witness insisted that I read it all.

20 I would not consciously use a racial element in
21 any lawsuit at any time. The Court knows my long history in
22 the area of racial relations, as Jim Craven knows or should
23 know. I assume he knows it. Maybe he doesn't. But race is
24 not something that I injected in the case. I did not ask

1 the questions of Suskind relating to the employer's ability
2 to hire for the purpose of in any way suggesting that they
3 should be blamed because they hired unprejudiced -- because
4 they hired prejudiced people. It would be an absurdity.
5 I'm too -- I'm much too good of a lawyer to try to prove
6 that a stupid thing like that -- every employer on earth
7 hires prejudiced people, and there's no law that says they
8 are required to do anything else except hire the man as they
9 come. So it's ridiculous for him to even suggest that. I
10 oppose the motion.

11 THE COURT: Judge.

12 MR. CRAVEN: On the question of the tape, I don't
13 know why Mr. Carr needs time, but in any event, if the Court
14 is going to give him time we request that the tape be
15 impounded.

16 THE COURT: Right.

17 MR. CRAVEN: And securely so, and that all tapes
18 of this trial be impounded. We would like to make
19 arrangements to get copies of today's tape at the earliest
20 possible time.

21 Now the question of injecting race into this
22 trial, that tape will indicate who did what to who and when
23 and when he did, when Dr. Suskind kept saying there were
24 other reasons, and Mr. Carr kept saying well, all right, I

1 tried to avoid riding this.

2 He did it to give the impression that the
3 prejudice was partly Dr. Suskind's, and then when he did
4 read that material he did it in that context. It was just
5 apparent to everybody in the courtroom and to the jury, who
6 perked up their ears, that we had a question of racial
7 prejudice arising in West Virginia. And if you come in off
8 of Mars and listen to this trial you would think that the
9 plaintiffs were the West Virginia Nitro workers. That's
10 another subject. But, nonetheless, we're entitled to that
11 tape.

12 We're entitled to a mistrial. Mr. Carr has
13 intentionally injected this thing. I regret saying that,
14 because yes, I'm not trying to say Rex Carr is prejudiced.
15 I don't even for a moment entertain that notion. But
16 sometimes he gets over zealous as an advocate, and today he
17 broke all the bounds. He can be as free of prejudice as a
18 new fallen snow, but he can use it as an advocate, and today
19 he broke the bounds. I've never seen a witness treated that
20 way.

21 MR. CARR: It is so strange to me that I should be
22 accused of that which Monsanto's witness did. Monsanto was
23 the one that injected this issue in the case, not me. I met
24 the issue and examined it. It's very strange. I don't

1 understand how you can accuse the victim of being the
2 perpetrator of the crime. Because that's what happened.
3 It was your side of the table that injected race into the
4 case. It was your side of the table that wanted to bring
5 out the way the community reacted to this man because of his
6 color. It was unnecessary. All you had to do was to say the
7 man was psychoneurotic because of his pigmentation, which is
8 all you had to do, which is what I did. The only thing
9 required to do to prove the point that Suskind wanted to
10 prove. He didn't have to bring in race at all. But he
11 insisted on it.

12 THE COURT: I'm going to have the tape impounded.
13 I will make arrangements for that. I've never looked into
14 that question myself, as a matter of fact.

15 MR. CRAVEN: May we get a copy of it?

16 THE COURT: Pardon?

17 MR. CRAVEN: May we get a copy of it?

18 THE COURT: Well, we'll take care of it later.
19 I'm going to have him impound it for right now.

20 As far as the Motion for Mistrial, I am denying
21 it. I think -- I listened to all of this, I saw all of
22 this, I took notes on this as I take notes throughout all of
23 this case, for a number of reasons, this is exactly one of
24 the types of reasons why. This whole issue of race was

1 injected by repeated non-responsive answers -- repeated non-
2 responsive statements, they were in no way answers, of Dr.
3 Suskind to questions propounded by plaintiffs' attorney.

4 It was brought out in such a way so that
5 apparently plaintiffs' counsel in his judgment decided that
6 reading this could not be avoided. Once it got out it was
7 handled in a responsible way. I completely disagree with
8 your assessment of how it was handled in front of the jury.
9 I think that it would be an outrage to let this case be
10 mistried on the basis and on the motion of the party whose
11 witness caused this incident to happen. Number one.

12 Number two, I think the incident was handled
13 correctly. I don't think that Monsanto was prejudiced by
14 it. I don't think anything happened out there that would
15 justify a mistrial being granted on motion of Monsanto under
16 these circumstances. Nothing at all.

17 It was injected by this witness as one of many
18 non-responsive answers, non-responsive statements that have
19 been given by this witness repeatedly in his examinations,
20 and it's something that once it was brought out, I think was
21 handled as correctly as any situation like that can possibly
22 be handled.

23 I think that the characterization, the statement
24 that the characterization was made that Monsanto hires

1 prejudiced people is totally inaccurate. The whole thrust
2 of this was that Monsanto took these people as they found
3 them, and this one apparently was found with racial
4 prejudice, which aggravated the situation, which Mr. Carr
5 attempted to causally relate to the autoclave run-away
6 reaction.

7 There is no basis at all for a mistrial. Under
8 these circumstances, and there is especially no basis for a
9 mistrial on something that was brought out by Monsanto's
10 witness' improper conduct. Your motion is overruled as far
11 as the mistrial.

12 Your motion is taken under advisement as far as
13 the tape. I think the operator is still here so I will make
14 arrangements right now to make sure that the tape, the audio
15 tape of today's proceedings, is kept so that it's not
16 erased. Excuse me just a minute.

17
18 (Discussion held off the record.)
19

20 MR. CRAVEN: Judge, the question has arisen, is
21 there not an audio of this entire proceeding, an audio tape?

22 THE COURT: I don't know. I think a lot of those
23 tapes, once the -- the tapes are basically used as back-up
24 for the reporters. I think after some point in time tapes

1 are reused, and I would assume that these are too after a
2 point in time, and especially under our circumstances when
3 these transcripts are turned out at such a fast rate. I
4 don't know -- I don't know how far back audio tapes of this
5 proceedings are still in existence. I just haven't checked.
6 But normally what they do is they will make tapes of this,
7 they're available if someone needs to listen to them, you
8 know, something is lost, mainly if a reporter has problems.
9 I don't know how far back any of these tapes go. I haven't
10 inquired.

11 MR. CRAVEN: We are now asking that the tapes be
12 preserved and we are asking for copies of the tapes.

13 THE COURT: I'll take that under advisement.

14 MR. CARR: Well, if the entire trial isn't
15 preserved, I sure as hell would object to just the Monsanto
16 part being preserved. It's kind of late to make a motion to
17 preserve audio of just the Monsanto part of the case.

18 THE COURT: I don't know. I'll have to find out.
19 I just don't know what has happened to that. It's not come
20 up. I'll have to find out.

21 MR. CRAVEN: Well, in any event, we would like
22 copies of everything that is in existence. We'd like to
23 have some information as to what is or is not in existence.

24 THE COURT: I'll try to get that for you.

1 MR. CRAVEN: Now may I move on to the other
2 motion?

3 THE COURT: Sure.

4 MR. CRAVEN: We filed on the 25th of February a
5 Motion to Voir Dire the Jury with reference to another
6 article where Mr. Carr is quoted extensively with reference
7 to this trial. That article was in a Belleville newspaper.
8 It was more of the same and, of course, it's one of a
9 continuing series of --

10 MR. CARR: I hope you're not arguing that motion
11 now.

12 MR. CRAVEN: Yes, I am.

13 MR. CARR: We're not up for argument. I haven't
14 filed my response yet.

15 MR. CRAVEN: This motion was filed the 25th of
16 February.

17 MR. CARR: I understand that, but I haven't filed
18 my response yet.

19 MR. CRAVEN: Are we at your pleasure on this?

20 MR. CARR: Yes. The Court gave me leave to file a
21 response. We're at the Court's pleasure. The Court said I
22 may file a response.

23 MR. CRAVEN: Judge, this is an article that
24 appeared in February, on the 16th, Sunday, the 16th of

1 February.

2 THE COURT: I know, I read it.

3 MR. CRAVEN: We want to have the jury voir dired,
4 and delay and no decision is a denial of the motion.

5 MR. CARR: Well, I don't know how that is.

6 THE COURT: I didn't hear you.

7 MR. CARR: I don't know how giving me an
8 opportunity to file a response in view of what you all have
9 been doing in the Supreme Court to us, and these motions
10 could be considered a denial of the motion. I expect to
11 have a response on file to your motion next week.

12 MR. CRAVEN: Rex, you've had a month, or almost a
13 month.

14 MR. CARR: There was another motion that I
15 responded to, I think, this week, and a week ago I think I
16 responded to the Supreme Court in something, and two weeks
17 before that I responded to the Supreme Court, plus I've been
18 trying this lawsuit everyday. I don't have the time back in
19 the office during the day to file these -- prepare these
20 motions, prepare responses. I have a problem of working at
21 night to get the case ready for the next day for the next
22 witness, and I'm simply not equipped to work 24 hours a day.
23 I'll have a response to that motion on file next week.

24 MR. CRAVEN: Look at the total unreality of that.

1 Judge, this is simply -- there has to be evenhandedness.
2 We're asking to have the jury asked about a story that
3 appeared in the Belleville newspaper, front page I think it
4 was, the 16th of February. The reason for it is to
5 ascertain if the jurors read Mr. Carr's remarks about this
6 case, including what a bad person, bad company Monsanto is,
7 and how much money the prior settlement was, and so forth,
8 all of which if the jury read it would entitle us to some
9 kind of relief. Yet we've been going on with the trial for
10 almost a month, since this was published, and Mr. Carr has
11 succeeded in not -- raising it, raising it, raising it,
12 that's a prejudice to us in itself, the delay.

13 Now, if this jury read that article, we should be
14 able to ascertain that, we should be able to make a record
15 on it, we should not have to go to trial before a jury
16 that's been reading Mr. Carr's holding forth of the case.
17 We say in here that this is a deliberate -- one of a
18 series --

19 THE COURT: I read both motions.

20 MR. CRAVEN: An on-going thing. He's saying no,
21 no, at his pleasure we'll do it. Judge, his pleasure --

22 MR. CARR: It is the Court's pleasure. The Court,
23 I think, is the one that gave me leave, Counsel, not you and
24 not me.

1 MR. CRAVEN: I understand that.

2 MR. CARR: It's the Court that ordered me, and
3 I'll obey the Court's order.

4 MR. CRAVEN: It should be apparent to anyone that
5 we filed this at the earliest practical time, that there
6 were some non-court days in there. We filed this as soon as
7 we could after that. We've gotten nothing. The delay
8 itself is a prejudice to us.

9 MR. CARR: Hold it, Counsel, when was that news
10 story published that you're complaining of?

11 MR. CRAVEN: The 16th of February.

12 MR. CARR: You filed this motion when?

13 MR. CRAVEN: The 25th.

14 MR. CARR: That's nine days later.

15 MR. CRAVEN: That's right.

16 MR. CARR: Okay.

17 MR. CRAVEN: It was on a Sunday, and I think there
18 were one or two court days during that week, and that's all.

19 It's not right to have to keep trying a case
20 before a jury that may have been reading Mr. Carr's
21 holdingforth about this case, and the fact that the co-
22 defendant settled for four million dollars, his versions of
23 this trial.

24 Of course, we didn't ever get a chance to voir

1 dire about his holding forth for the New York Times when the
2 reprint of that was in the Post Dispatch. Now here is the
3 hometown paper of the jury, we can't even voir dire the
4 jury. If he has his way, when we get around to it, it will
5 be stale.

6 THE COURT: Do you have anything to say?

7 MR. CARR: Yes. As I suggested, your Honor, I'll
8 have our response on file Monday.

9 THE COURT: This was raised once before, I believe
10 by Mr. Heineman. I think it was raised by you earlier.

11 MR. NASSIF: Last week.

12 MR. HEINEMAN: Yes.

13 THE COURT: I stated at the time, I don't remember
14 when it was raised, but it was raised by you before, and I
15 stated at the time that I had read the article, I've read
16 the motion, I did not think that waiting would make it
17 stale, and that it was not prejudice to the defendant.

18 We had a thorough discussion at the time of what
19 was going on as far as the trial was concerned about matters
20 in the Supreme Court in these particular motions, and I
21 would incorporate what happened there, I would incorporate
22 what I said then also.

23 And the sum and substance of what I said was
24 basically, number one, Monsanto was not prejudiced by the

1 delay in consideration of the motions; and number two, that
2 the way I preferred that these motions be handled by me, and
3 what I have found most effective is to have oral argument on
4 them if requested after the time that there has been a
5 response by movant, response by respondent to the motion,
6 and that if they want a further supplemental response by the
7 movant, that the argument is shorter, better and my decision
8 is easier after that.

9 Number three, in the priority of matters before
10 this Court, obviously anything in the Supreme Court takes
11 precedence over anything in this Court. When the jury is
12 available, trial in front of the jury takes precedence over
13 anything that we're going to do back here.

14 Mr. Carr has indicated that next week he'll have a
15 response on file. That response is timely. If you wish to
16 make a -- you're the movant, you're entitled to the last
17 word, if you want to file a response on that, then it will
18 be argued. I do not think that that is prejudicial to your
19 client. I think that it is a timely proceeding.

20 In the context of everything that's going on, and
21 that after that response is filed, and if you wish to do so
22 after you've made a reply to that, the appropriate time to
23 argue it after court sometime not in jury time. That's my
24 position. That was my position then and it's my position

1 now. I don't think anything has changed.

2 MR. CRAVEN: Can we fix a specific calendar on
3 this? Mr. Carr is going to file a response on Monday. Can
4 we file a reply on Wednesday, sometime during the day
5 Wednesday, and argue it at the conclusion of the taking of
6 evidence on Wednesday?

7 MR. CARR: Well, your Honor, I wouldn't object to
8 that, except what they may reply to, if they assert
9 something new that is, in fact, not a reply to my motion, as
10 they do from time to time, I would want leave to reply to
11 any new matter that they assert. But other than that I
12 won't object to the schedule.

13 THE COURT: Fine. So Wednesday we'll plan on
14 arguing it.

15 MR. CRAVEN: Wednesday at the --

16 THE COURT: After court.

17 MR. CRAVEN: After court.

18 THE COURT: Right.

19 MR. CRAVEN: He'll file his answer on Monday, or
20 his reply on Monday, and we'll reply to it.

21 THE COURT: By Wednesday.

22 MR. CRAVEN: Will that be also true of the other
23 motions?

24 THE COURT: Both motions.

1 MR. CARR: I won't have a response ready on the
2 second motion.

3 THE COURT: I thought you meant both motions.

4 MR. CARR: No, I don't have it ready yet. I'm
5 still working on it.

6 MR. CRAVEN: You know, Judge, there's just
7 something that offends my sense of logic. We're going into
8 the third year of a trial. This motion raises the question
9 that no jury can reasonably be expected to try the Nitro
10 case, which Mr. Carr is doing, and these plaintiffs, and
11 take the medical testimony and to sit there and endure this
12 kind of case and then try to pick and choose and sort and
13 make sense out of this case. Now what the Appellate Court
14 said in --

15 THE COURT: Wait a minute. You're arguing the
16 motion now.

17 MR. CRAVEN: What I'm saying now his notion of the
18 time sequence compels us to go ahead and keep right on
19 trying the case, which is a fairly strong indication to me
20 that he thinks he's going to prevail on the motion. That
21 doesn't seem right. It just doesn't seem right that you
22 have to keep trying something when you're saying the trying
23 of it offends the laws of this state.

24 THE COURT: Well, I disagree with you. My

1 position has always been on these motions and on requests to
2 adjourn these proceedings and order that these motions go
3 forward that we are going to continue trying it and handle
4 these motions at the time.

5 I think I made clear before on the record that if
6 you're seeking an ultimate relief of an end and the end
7 comes because of that seeking of this ultimate relief of an
8 end X amount of time afterwards rather than earlier, you
9 still got the end. If the motion is denied, you have not
10 lost the intervening time in proceeding on the trial.

11 I have consistently taken the position, unless its
12 been an impossibility, or some extraneous reason had
13 interfered that this matter should proceed while we were
14 considering these motions, and I've read both of the motions
15 when they were filed -- excuse me. I'm trying to get over a
16 cold. I've read both of these motions when they were filed.
17 My impression then, and I haven't heard anything to change
18 it, is that the trial should proceed while we are
19 considering them.

20 I think as far as a priority as to time that your
21 motion on a voir dire of the jury would take precedence as
22 far as being handled first. I think also it is the second
23 motion, the motion on the asking for a mistrial, is by the
24 nature of the matters that you state, the allegations that

1 you make, and the relief that you seek a much more
2 complicated and meatier, I guess you would say, motion, and
3 under the circumstances then I think it would be very
4 reasonable that that one be briefed and argued second, both
5 on the basis of the material allegations of the motions by
6 comparison, and as to the -- any possibility of time
7 affecting the substance of the motions which it would be
8 more likely to do in the voir dire situation, by your own
9 argument, than it would on the mistrial motion.

10 So under those circumstances, what I would like to
11 do, is after the argument on Wednesday, or perhaps on
12 Thursday, if we could agree to a -- well, I'd prefer it on
13 Wednesday, actually, if we could agree to a time schedule
14 for briefing and then ultimately argue it on the Motion for
15 a Mistrial that you filed. So we keep it rolling.

16 MR. CRAVEN: Can we fix that calendar now then?

17 THE COURT: Pardon?

18 MR. CRAVEN: Can we fix the calendar now?

19 THE COURT: I haven't asked anyone to think about
20 it. I don't know if both of you are ready to give me a
21 suggestion now. I'm willing.

22 MR. CARR: I will work next weekend, your Honor,
23 in order to get the other motion -- my response to the other
24 motion read, and I should have a response to that motion

1 then ready for the week after this coming week. As far as
2 I'm concerned then we could argue it sometime that following
3 week. The week that I file the response.

4 THE COURT: So next week we're going to argue this
5 other one and sometime the next week file a response to
6 that?

7 MR. CARR: Right.

8 MR. CRAVEN: A week from Monday he'll file a
9 response to the Motion for Mistrial?

10 MR. CARR: I should be able to do so.

11 MR. CRAVEN: And we would file our reply sometime
12 on Wednesday and argue it on the following Wednesday, so
13 it's a week later; is that what you're saying?

14 THE COURT: Is that acceptable to you?

15 MR. CARR: Fine with me.

16 THE COURT: Fine.

17 MR. HEINEMAN: All right.

18 THE COURT: After court again. Let me make that
19 clear. I don't want you to have to come down here in the
20 morning expecting to argue this and wait until five to do it.

21 MR. CARR: Your Honor, there is one thing I would
22 ask the Court to consider doing, and it's certainly within
23 the Court's power to do as it wishes, of course, but as the
24 Court knows, for the past two months Monsanto -- any time

1 the Court rules on a motion of this sort, Monsanto files a
2 Motion for Supervisory Order in the Supreme Court.

3 Most recently they took advantage, I don't know if
4 it's deliberate or not, but they took advantage of a rule
5 that says I have to file a reply within three days in the
6 Supreme Court if something is personally served. Maybe it
7 was five days. I forget which, either three or five.

8 It's impossible for me to, if the court issues
9 orders on these motions, more than -- it's impossible for me
10 to respond, first of all, to more than one a week because of
11 the trial. They have at least eight pending now in the
12 Supreme Court that they filed. I'm fairly sure there's
13 eight.

14 This, of course, Mr. Craven is here only because
15 he is their Appellate counsel, and he intends obviously to
16 take these matters on up to the Supreme Court, as is his
17 right to do, but from my viewpoint I can't respond under the
18 constraints of the Supreme Court rules to more than one
19 motion at a time. They caught me in the bind last time.
20 They filed two motions at one time in the Supreme Court.
21 One I don't even think they served you with, but one you
22 were served with as a respondent, and one you were not a
23 respondent. There were two filed.

24 THE COURT: I didn't get a copy of one of them.

1 MR. CARR: I had a hell of a time replying to
2 those, and did not reply to either of those within the time
3 allowed by the Supreme Court because I was busy trying this
4 case.

5 What I would ask if the Court could consider
6 making rulings on these motions in a framework that would
7 give me an opportunity if they're going to file a motion,
8 give me an opportunity to adequately respond without asking
9 the Court to recess the trial so that I can respond, because
10 the next time I get caught in a switch like that, I don't
11 want to ask leave of counsel to agree for time for me to
12 file in the Supreme Court.

13 I want to be timely in the Supreme Court, but I
14 can't be timely when they're doing this and try the case as
15 well. So for the sake of -- but I can be timely if I get
16 the weekend between motions to work on them. So what I
17 would ask the Court to do, if it's possible to do it, rather
18 than ask for a recess from time to time to write my response
19 to the Supreme Court, that you time your orders so that I
20 will have appropriate time after the orders in which to
21 respond to their motions. I don't know whether it's
22 appropriate or not, but I'd like for the Court to consider
23 it.

24 MR. CRAVEN: I'd have to say that this

1 anticipatory winning that Mr. Carr does all the time kind of
2 doesn't --

3 MR. CARR: Counsel, both of these motions have
4 already been ruled upon, similar motions have already been
5 ruled upon by the Court.

6 MR. CRAVEN: Then why don't you have time to
7 respond to them?

8 MR. CARR: Counsel was even so sure that we
9 wouldn't even need arguments he suggested to the court,
10 "Judge, we don't need to argue it, just go ahead and rule on
11 it."

12 MR. HEINEMAN: What are you talking about?

13 MR. CARR: When you filed these motions.

14 MR. NASSIF: Said he didn't need oral argument on
15 it. The Judge asked you if you needed time to file a
16 written response. You said yes. He asked Ken if he needed
17 oral argument, and Ken said no.

18 MR. CRAVEN: The last time that Mr. Carr filed
19 some responses in the Supreme Court they were late under the
20 rule. He filed a Motion to File Instantly. We filed a
21 written consent to his Motion to File Instantly. Your
22 Honor wasn't served with a copy of something, but it was a
23 case in which you're not a respondent.

24 THE COURT: I understand that.

1 MR. CRAVEN: I assumed you didn't want a copy of
2 it. When this Court rules we may need time to prepare our
3 response in the Supreme Court to Mr. Carr's Motion for
4 Supervisory Order. We would like to think that we would be
5 able to have the same kind of consideration to respond to
6 his Petition for Supervision. That's a distinct
7 possibility. I don't think we need to go into anticipatory
8 rulings.

9 MR. CARR: I have nothing further to say, Judge.

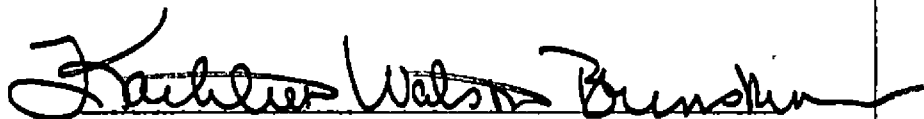
10 THE COURT: Fine. Okay.

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12 (Court adjourned.)
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1 STATE OF ILLINOIS)
2 TWENTIETH JUDICIAL CIRCUIT)
3 COUNTY OF ST. CLAIR)
4

5 I, KATHLEEN WATSON BRUNSMANN, one of the Official
6 Court Reporters, do hereby certify that the foregoing
7 transcript is a true and correct copy of said transcript.
8

9 DATED: March 28, 1986.
10

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13 KATHLEEN WATSON BRUNSMANN, RPR, CSR

14 Official Court Reporter
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1 STATE OF ILLINOIS)
2 TWENTIETH JUDICIAL CIRCUIT)
3 COUNTY OF ST. CLAIR)

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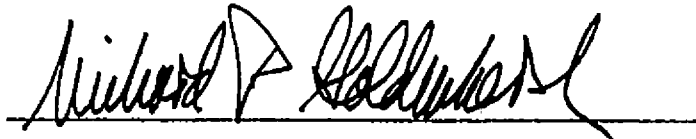
5 I, RICHARD P. GOLDENHERSH, CIRCUIT JUDGE, do
6 hereby certify that the foregoing transcript is a true and
7 correct copy of said transcript.

8

9 DATED: March 28, 1986

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11

A handwritten signature in dark ink, appearing to read "Richard P. Goldenherish", is written over a horizontal line.

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RICHARD P. GOLDENHERSH, CIRCUIT JUDGE

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