

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

FRANCES E. KEMNER, et al,

Plaintiffs,

vs.

MONSANTO COMPANY,

Defendant.

NO. 80-L-970

REPORT OF PROCEEDINGS

BEFORE THE HONORABLE RICHARD P. GOLDENHERSH

APRIL 4, 1986

JURY TRIAL

APPEARANCES:

MR. REX CARR, Attorney at Law, and
MR. JEROME SEIGFREID, Attorney at Law,
On Behalf of the Plaintiffs.

MR. KENNETH HEINEMAN, Attorney at Law, and
MR. JAMES CRAVEN, Attorney at Law, and
MR. JOSEPH NASSIF, Attorney at Law,
On Behalf of the Defendant.

TRACY LYBARGER, C.S.R., R.P.R.

Official Court Reporter

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

7 April 4, 1986

8 (The following proceedings were had in chambers
9 out of the hearing and presence of the jury at 9:30 a.m.)

10 THE COURT: It is just before trial. First of
11 all, what do each of you have that you want to bring up?

12 MR. CARR: Your Honor, I would like to--there were
13 certain implied charges made by Mr. Nassif last night which
14 I would like to get on the record as soon as possible the
15 circumstances surrounding the matter that he has alleged to
16 have occurred or implied occurred so there would be no
17 problems in the record at any time as to what actually
18 transpired.

19 THE COURT: That was about the juror?

20 MR. CARR: That's correct.

21 THE COURT: And what do you have?

22 MR. CRAVEN: Same subject matter. We want to get
23 it clarified now, and we have several Motions that we want
24 to make and--

1 THE COURT: On that matter?

2 MR. CRAVEN: On that matter. And Judge, we would
3 like to do it before we resume anything.

4 THE COURT: Well, we are going to have all the
5 jurors here in just a short time. I'll start this for a
6 while, but we may finish it up later. Go ahead.

7 MR. CARR: All right. If the Court will recall,
8 on September 27th or thereabouts a juror got sick, a Mrs.
9 Melton, and was taken to the hospital and had an appendec-
10 tomy and a hysterectomy at that time. From that time until
11 about October 11th I believe we had no regular court ses-
12 sions, but the Court was in communication with each side,
13 at least the Court advised us that he was in communication
14 with each side, as to the circumstances of this juror's
15 illness, and as a matter of fact, called--the Court advised
16 us that he would call the surgeons and the family physicians
17 involved and find out when this lady could come back to
18 court. And I assume when the Court called me, I'm confi-
19 dent, and advised me, that I'm sure the Court called one or
20 more of the opposite Counsel and advised them of that cir-
21 cumstance as well. There was never to my knowledge any con-
22 ferences other than by telephone with either the plaintiff's
23 Counsel or the defense Counsel. If there were conferences
24 with the defense Counsel face to face, I'm not aware of them

1 and I was not privied to them. The telephone conversations
2 of which I am aware and which did take place, the Court
3 initially advised us by telephone that we were going to
4 resume trial the following day or following Monday, I forget
5 which it was right now because I did not take notes on the
6 circumstances, because the Court had been advised by the
7 family physician that this juror would be out of action for
8 eight weeks or something of that sort, if my memory serves
9 me right, approximately eight weeks. The Court advised us
10 that it was going to notify the jurors--the bailiff to get
11 ahold of the jurors and to have them return to Court the
12 following day for the resumption of the trial. And I assume
13 that started taking place. Later on that, I believe that
14 very same day, the Court called again and advised us that he
15 had talked to the operating surgeon and had been informed
16 that this lady could return to trial within a short period
17 of time, three to four weeks rather than six to eight weeks,
18 and that she wanted to return to the trial having expended
19 that period of time and that the Court was going to wait in
20 view of the new information received from the operating
21 surgeon that she could return to the trial. Now, all of
22 that I believe took place by telephone--well, I do know none
23 of it took place face to face. It is possible or conceiv-
24 able that there may have been a conference among all of us

1 in the chambers. I know there was no in chambers conference
2 in this matter of any sort without all Counsel being
3 present. My memory is is that all of this conversation took
4 place by telephone; that the Court communicated and at least
5 I was advised at the time that the Court was going to com-
6 municate this information to the opposite Counsel. Now, I
7 do not know whether or not the Court advised opposite
8 Counsel that this juror wanted to return. But, I am 99
9 percent sure that it was the Court that advised me that he
10 had been advised by the bailiff that when she was going out
11 to notify the jurors--or notifying them by telephone, I
12 assume; I don't know whether it was in person or not--but
13 when she was notifying them that we were going to return to
14 trial without Mrs. Melton, Mrs. Melton informed her or
15 fellow jurors--I don't know whom it was, and I don't have
16 that accurate of a memory of it--or fellow jurors that she
17 did not want this case to proceed without her, that she was
18 more than willing to come back, and the Court. And this is
19 the information that I have. Now, whether or not the Court
20 communicated to opposite Counsel the exact same information
21 that was communicated to me or whether the Court communi-
22 cated an anecdotal matter to the opposite Counsel that the
23 Court did not give to me, I don't know; but, this is what I
24 am aware of and know of the circumstances in question. And

1 that's all I know about it, your Honor.

2 THE COURT: What do you have to say?

3 MR. CRAVEN: Judge, last night Mr. Carr said that
4 either the Court or the bailiff--

5 THE COURT: Yes.

6 MR. CRAVEN: Related to him the content of conver-
7 sation with Mrs. Melton. That was the first time we had any
8 knowledge that there was a conversation with Mrs. Melton or
9 the content of it. So that one of two things is true.
10 Either the Court has communicated with Mr. Carr ex parte,
11 or the bailiff has been telling Mr. Carr what the jurors
12 are saying, or someone has had a conversation with the
13 juror of which we have no knowledge. Now, when this first
14 arose--we have checked all the transcripts--when this first
15 arose Mr. Carr indicated that he had no objection; he
16 wanted to go ahead with the trial; he didn't want to wait
17 for this juror. And he said specifically, "We agree with
18 the Motion then, Judge, because I don't see any prospect
19 that the lady is going to be back inside of three weeks to
20 a month." And that was September 27th.

21 THE COURT: Right.

22 MR. CRAVEN: He wasn't present on the October 11th
23 proceeding. But, we were.

24 THE COURT: What was the October 11th?

1 MR. CRAVEN: This was a subsequent in chambers
2 conversation.

3 MR. CARR: That's when Monsanto filed a Motion--I
4 wasn't here at that time--but Monsanto filed a Motion to
5 resume trial on the next day rather than wait for the juror
6 to come back. I wasn't here.

7 THE COURT: This was a hearing on that?

8 MR. CARR: Yes, there was a Motion there, and Mr.
9 Seigfreid represented the plaintiffs at that time, and so
10 far as I know, that's the only--there's only two sessions
11 relating to this matter; that's on September 27th and
12 October 11th. I don't know of any others.

13 MR. CRAVEN: Now, it's clear as the record exists
14 now that what has happened is that some decisions have been
15 made by Counsel and the Court with reference to Mrs. Melton
16 based upon information that we didn't have, and taking Mr.
17 Carr's statement last night as the truth, we are entitled
18 before we go forward and we do move to strike Mrs. Melton.
19 We want an evidentiary hearing to determine the basis of
20 what Mr. Carr said; where he got the information; and since
21 Mr. Carr has implicated the Court--and this morning proved
22 even further--then, Judge, we are respectfully requesting
23 that we have an evidentiary hearing on this question with a
24 different Judge. Because Mr. Carr is indicating that he

1 says that this was not a matter of substance. We think it
2 was a matter of substantial substance. And he is now
3 saying that he got this information from the Court. We
4 didn't have that information. We may well have made very
5 different judgments with reference to this juror had we had
6 that information. So, until we know what happened, what
7 transpired, and how it transpired, we don't want to go
8 forward with this juror in the box. Mr. Carr said he
9 didn't either, and he was willing to stop. And then all of
10 the sudden he changed his mind. And our experience is that
11 he doesn't do that willy-nilly. And he knew things that we
12 didn't know. And we have been prejudiced by the fact that
13 this juror is sitting in that box. And we want to find out
14 what happened; why it happened; who knew what; when; why
15 didn't everybody know it; and since Mr. Carr has implicated
16 your Honor, we ask that this be done by--under the super-
17 vision of a Judge other than your Honor. We need to have
18 the bailiff interrogated as to conversations with jurors.
19 We, I think, clearly are--if the bailiff is involved--are
20 entitled to have a different bailiff. We are entitled to
21 have the juror removed, and we have to find out what kind
22 of taint if any is applicable to the other jurors. And in
23 view of the--we recognize the serious nature of this; we
24 recognized the serious nature of it last night when Mr.

1 Carr stood up and made these observations to the Court and
2 indicated to the Court last night that we would be prepared
3 this morning after we checked the transcripts to see what
4 course of action we should take. And, Judge, to say we are
5 in a hurry and we want to go out there and start this trial
6 with that juror in the box and with these decisions that
7 have been made, it is just manifestly unfair, and we don't
8 want to do that. And we want to move expeditiously and are
9 prepared to move expeditiously upon any kind of reasonable
10 investigation with reference to this matter.

11 THE COURT: Any response?

12 MR. CARR: Your Honor, Counsel hasn't been here
13 and wasn't here when this matter transpired. Obviously
14 Counsel is not aware of the fact that the Court did initi-
15 ally decide to proceed, and there is no question in my mind
16 but what the Court advised not this particular Counsel, but
17 by telephone some other Counsel of the Court's decision so
18 to do, because we were gearing up to come back the next
19 day. The Court was ordering us to come back on the very
20 next Monday. There's no question in my mind but what the
21 Court advised one--whatever Counsel may have been in Court
22 that particular week, one of half a dozen--of that fact.
23 Now, it is absolutely correct that when we were initially
24 advised that there was an indefinite period of time when

1 this juror was going to be out, there's no question but
2 what we did not want to wait an indefinite time. And I
3 think even at that time, at three to four weeks, we did not
4 want to wait that period of time. The Court, however, in
5 it's discretion ruled that we weren't going to wait the
6 eight weeks required that the family physician said. And
7 the only possible way this Court could communicate in that
8 situation is by telephone, and I--by telephone communica-
9 tion to the operating doctor and by telephone communica-
10 tion to the family physician. And to suggest--for former
11 Judge Craven to suggest that there was any way of any
12 wrongdoing on the part of the Court in communicating that
13 by telephone to us on an administrative matter has nothing
14 to do with a juror being tainted. This Court was making up
15 it's mind as events developed whether or not it was
16 worthwhile to wait for the juror or not to wait for the
17 juror. The Court did not communicate to me that the reason
18 it was going to wait the three or four weeks that the
19 operating surgeon said it would take was the fact that the
20 juror wanted to return. The Court communicated to me--and I
21 don't know what the Court told opposition Counsel by
22 telephone--the Court communicated to me that the reason
23 that the Court had changed it's mind was because the
24 operating physician said that this juror could return

1 within a relatively short period of time. And the
2 implication--the suggestion by Mr. Nassif last night and
3 now this morning suggested by Mr. Craven that this Court
4 has done something or that this juror is somehow tainted
5 because she expressed to a bailiff and--I assume it was to
6 the bailiff--and the bailiff expressed to the Court that
7 she wanted to continue with the case, that's a hallmark of
8 a good juror that Monsanto should be pleased and happy
9 with. It would be a bad situation if a juror did not want
10 to serve. This lady expressed desire to serve, and
11 certainly at least to me the Court did not communicate how
12 she felt about the merits of the case nor that she had made
13 any decisions about the merits pro Monsanto or anti Monsan-
14 to. It simply was--it got to me at least the expression of
15 a good citizen who wanted to continue her duty and the
16 Court had found that facts had developed in a manner that
17 would allow her to continue her duty. And to question that
18 juror or to question the bailiff about this episode is
19 absurd and for the charge to be made that the Court cannot
20 communicate to Counsel by telephone in this situation.
21 Now, if the Court did indeed advise just plaintiff that we
22 were not going to proceed with this case in view of what
23 the surgeon said, then I would suggest the Court is in
24 error and the Court should have communicated both sides of

1 his decision. But, there is no doubt in my mind the facts
2 show that we did proceed upon the advice of the surgeon
3 that it was not eight weeks; and there's no question in my
4 mind but what the Court communicated to the lawyers for the
5 other side the very same facts that it communicated to me
6 about the availability of that juror. And we strongly
7 oppose--well, and even the implication that this Court must
8 be itself the subject of an investigation over a decision
9 made to wait for a juror's recuperation is absolutely
10 absurd, and it's another--their wanting to excuse this
11 juror is another attempt of Monsanto to get the mistrial
12 that it's been looking for for many many months. And we
13 certainly oppose everything that Counsel has--for Monsan-
14 to--has suggested.

15 MR. CRAVEN: Judge, this record now clearly
16 indicates that back on September 27th Mr. Carr didn't want
17 to go forward with the case, and he then talked in terms--
18 not in terms of eight weeks, in terms of three to four
19 weeks.

20 MR. CARR: I thought I did want to go forward
21 with the case in September.

22 MR. CRAVEN: You said you wanted her excused.

23 MR. CARR: Yes, that's what I said; I did want to
24 go forward. You said I didn't.

1 THE COURT: Let me interject something. My
2 memory of it--and I haven't checked anything on it--is that
3 both sides wanted to go forward quickly with her or without
4 her. And it was my decision, disagreeing with both of you,
5 after talking to both of the surgeons, both of the doctors,
6 the surgeon and the treating doctor, or supervising doctor,
7 or whatever, that we were going to wait, despite both of
8 you wanting to go forward. My--

9 MR. CRAVEN: But, Judge--

10 THE COURT: Now, wait a second. Wait a second.
11 So, let me correct that. I don't think--my memory of it is
12 that no-one changed their position as far as waiting for
13 her full time. That was my decision basically in defiance
14 of everybody as far as whether we would wait or not. And
15 so, let me correct that as far as anyone's position. Do
16 you have anything further? You did make Motions, and I
17 think you should have the last word on your own Motions.

18 MR. CRAVEN: Well, it's clear that Mr. Carr
19 wanted to go forward and then decided to wait.

20 MR. CARR: Where's that clear?

21 THE COURT: That's what I was trying to say. I
22 decided that everybody would wait.

23 MR. CRAVEN: Let me just make--I'll check the
24 October 10th transcript--but the fact of the matter is

1 according to Mr. Carr now--

2 THE COURT: Yes.

3 MR. CRAVEN: He knew something that we didn't
4 know about this juror when he was making a decision back in
5 September or October. And we don't know how he knew it.
6 We know we didn't know it. And we think it was relevant to
7 our decisions then as to what to do about this juror. Now,
8 it's not right for Mr. Carr to know something and us not to
9 know something. It's simply not right. Now, someone has
10 talked with this juror, and we don't know who. What did
11 the juror say? What were the questions? What was the
12 basis for the questions? What was communicated to the
13 other jurors? Who did it? Last night Mr. Carr said it
14 was--he thinks maybe it was a conversation of the Court
15 with the juror.

16 MR. CARR: No.

17 MR. CRAVEN: That's my understanding.

18 MR. CARR: That's not what I said last night.

19 MR. CRAVEN: And he said that either the Court or
20 the bailiff told him this. If the bailiff has told him
21 what jurors are saying, what else has the bailiff told him
22 the jurors are saying? If the bailiff--

23 MR. CARR: Let me make it clear. My best recol-
24 lection today, it was the Court and not the bailiff.

1 MR. CRAVEN: All right. That's even more
2 serious.

3 MR. CARR: Well, I don't care whether it's more
4 serious or not, but that is the facts as I remember it.

5 MR. CRAVEN: But, that is even more serious.
6 And, Judge, it is simply wrong to resume this trial with
7 that juror in the box until we know what happened; when it
8 happened; with whom it happened; why it happened; and why
9 we didn't know it and have the same footing as Mr. Carr.
10 Now, that's essential to any notion of fairness and due
11 process. Now, how do we make an intelligent decision as to
12 what to do back in October when this juror was going to
13 have surgery when we didn't know what she said to various
14 people. If there was a conversation with the juror by the
15 Court, we are unaware of it. There's no transcript of a
16 conversation. I don't know whether there was one or not.
17 I don't know what the Court told Mr. Carr in telephone
18 conversations. Quite obviously there's no way for us to
19 know that. And he doesn't know what the Court told us in
20 telephone conversations. But, we are telling this Court
21 that this business of this juror's observations with refer-
22 ence to her burning desire to continue her service--why?
23 Why? Good citizenship? Well, there ought to be--I just
24 don't--I'm not persuaded that that's necessarily so. But,

1 why? Why would she make these observations? And to whom?
2 It's not right. This juror is tainted. But, before you
3 make a judgment on that, let's find out what is happening,
4 who's talking to whom, why is there conversation, why does
5 one side know something and the other side doesn't, and
6 let's get at the root bottom of that first.

7 MR. CARR: Your Honor, I suggest Counsel doesn't
8 know what his side knows. Were any of the--there's no
9 doubt in my mind that the Court contacted a lawyer from
10 Monsanto. Who was that, Mr. Craven?

11 MR. CRAVEN: It was not me.

12 MR. CARR: Well, you don't know then what was
13 said to the lawyer from Monsanto; do you, sir?

14 MR. CRAVEN: No, I don't.

15 MR. CARR: What lawyer was it that was contacted
16 on more than one occasion, not just once, about this
17 matter?

18 MR. CRAVEN: I'm telling the Court that we heard
19 last night for the first time what that juror said.

20 MR. CARR: Well, but what lawyer was it that has
21 knowledge?

22 MR. CRAVEN: I don't know.

23 MR. CARR: Well, how can you sit there and make
24 some charges if you don't know what the Court told other

1 Counsel?

2 MR. CRAVEN: Now, I'm not Dr. Suskind; you don't
3 get to use those tactics on me.

4 MR. CARR: Counselor, I suggest you are talking
5 from ignorance. If you don't know what the Court advised
6 Monsanto attorneys in this entire matter, how can you pos-
7 sibly say that some information was communicated about the
8 surgeon, about the time it was going to take, if you have
9 no knowledge of it?

10 MR. CRAVEN: Why don't we let you talk to Mr.
11 Heineman. I believe you were the one called.

12 MR. HEINEMAN: I'm the one that the Judge called.
13 And the Judge told me about that it would just be a time.
14 The Judge told me that he had talked to the doctors--

15 MR. CARR: Yes.

16 MR. HEINEMAN: And that there would be a parti-
17 cular time when she would return, period.

18 MR. CARR: Didn't the Judge tell you on two
19 occasions--first he told you we were going to go ahead with
20 this trial and was notifying the jurors?

21 MR. HEINEMAN: No, I don't recall any such
22 conversation.

23 MR. NASSIF: We got the transcript that says he's
24 going to talk to the doctors and then consider going for-

1 ward. That's what the transcript says.

2 MR. HEINEMAN: The information I got was that we
3 were not going forward, that's what I was told, that we
4 were not going forward.

5 MR. NASSIF: Until he talked to the doctor.

6 MR. CARR: Well, until he talked to the doctor.

7 MR. HEINEMAN: Right. And then I was told when
8 we were going back. That I was told. Those are the two
9 things I was told. I wasn't told about any conversation
10 with a juror. I can't imagine why the bailiff was talking
11 to the juror about the possibility, as you suggested, that
12 we would return to trial without her.

13 MR. CARR: Well, because that's what the Court
14 advised the bailiff to tell the jurors, that we were going
15 to trial.

16 MR. CRAVEN: Without her?

17 MR. CARR: Yes.

18 MR. CRAVEN: When?

19 MR. CARR: And--when the Court advised us that he
20 had talked to the family physician and that it was going to
21 take too long for the recuperation to take place.

22 MR. CRAVEN: Is that on record anyplace?

23 MR. CARR: No. As I told you, Counsel, he was
24 talking to the attorneys for Monsanto and attorneys for the

1 plaintiff by telephone. This was the decision the Court
2 was making and just exactly what facts he told.

3 MR. CRAVEN: This was in October?

4 MR. CARR: September.

5 THE COURT: Either one of you have anything more
6 to say? Okay. As I told you before when I interrupted
7 your argument, it was my decision to wait. I don't remem-
8 ber there ever being any agreement on it. But, I decided
9 initially to go ahead and then decided later to wait. I,
10 except for the meetings that we had here, I contacted--I
11 communicated with Counsel for plaintiff and Counsel for
12 defendant on the same day by telephone and told both sides
13 the same thing. I remember talking to you at one time, Mr.
14 Heineman--I'm not pointing to you--and I remember talking
15 to Mr. Musgrave once and I don't remember whether I talked
16 to anyone else in the time. I generally, when I've called
17 your office, any of the four of you or five of you who are
18 there, I just assumed is notice to everybody else. So,
19 whoever I can get, I talk to. And basically with the
20 plaintiffs also as far as even Mr. Carr or Mr. Seigfreid.
21 If I talk to one, I figure I've talked to both. And admin-
22 istratively I communicated this by telephone both on the
23 decision to go ahead and then my subsequent decision to
24 wait. As I said, I've told both sides the same thing. I

1 don't frankly remember whether I said anything about this
2 thing or not. If I told one, however, I did tell another.
3 I'm careful to do that, and even to the point at times to
4 making lists of what I'm going to communicate so I do com-
5 municate the same substance to both sides if for admini-
6 strative reasons I have to get ahold of either of you by
7 telephone. It was my decision to resume, it was my
8 decision to wait, in the face, if I remember correctly, of
9 a Motion to Proceed towards the end that was filed, a
10 written Motion, to go ahead. I think that as Mr. Carr
11 characterized this earlier, this is anecdotal only. I
12 think that a mountain is being made out of a molehill, and
13 I think that there is no just reason under any circumstance
14 to delay the resumption of this trial this morning, and
15 there is no reason in the world to strike this juror from
16 the jury panel. I think that this is making a mountain out
17 of a molehill, I'll repeat it again. And your Motions are
18 entirely denied, and as far as I'm concerned, the matter is
19 closed. So, assuming that the jurors are here by now, we
20 will resume. Well, before we do, I've gotten this request
21 from a juror for a day off if anyone has any objection to
22 it. And I have one question I need cleared up from yester-
23 day's argument. When you mentioned an affidavit by Mr.
24 Carr, you are talking about a section of one of his

1 responses, not a separate sheet saying this is an affida-
2 vit; right?

3 MR. NASSIF: Just the affidavit that accompanied
4 his entire list of objections, your Honor.

5 THE COURT: He signed it?

6 MR. NASSIF: Yes.

7 THE COURT: And so, you are talking about that in
8 the form of as an affidavit?

9 MR. NASSIF: Yes, sir, that he had attested that
10 everything in his objections were true.

11 THE COURT: Okay. Because I was looking for a
12 separate affidavit attached to it.

13 MR. NASSIF: No.

14 THE COURT: And I was wondering if I had missed
15 something. But, that's what you are talking about; there
16 wasn't a separate affidavit?

17 MR. NASSIF: No, not on the juror's attentive-
18 ness or anything. It was just part of his entire
19 objection.

20 THE COURT: Okay.

21 MR. NASSIF: We'll have a separate affidavit.

22 THE COURT: I understand you will have a separ-
23 ate affidavit on that one subject. I was just wondering
24 whether I had missed something.

1 MR. NASSIF: No.

2 THE COURT: Okay.

3 MR. CRAVEN: I assume we can be given leave to
4 file an affidavit by Mr. Heineman that he was the attorney
5 called with reference to the subject matter of this and
6 reciting what the conversation was.

7 THE COURT: You can recite whatever you want.
8 Both sides can file whatever they want on this. I will
9 look it over and consider it as a Motion to Reconsider if
10 you decide to file anything. But, sure, you can file
11 whatever you want. I've got no problem with that. And Mr.
12 Carr, you may, too, if you wish. Does anybody have any
13 objection to that?

14 MR. NASSIF: Judge, can we get back to you on
15 this--on this letter? I'm not saying we are going to have
16 an objection, but we need to sort of talk from a scheduling
17 standpoint.

18 THE COURT: Sure. But, I would like to tell her
19 today.

20 MR. NASSIF: Yes; we'll tell you at noontime.

21 THE COURT: Fine.

22 MR. NASSIF: Just give us a few minutes to--

23 THE COURT: Sure.

24 MR. NASSIF: We won't hold you up.

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

3 THE BAILIFF: Everyone please rise. This Circuit
4 Court of the Twentieth Judicial Circuit of Illinois and St.
5 Clair County is now in session, the Honorable Richard P.
6 Goldenhersh presiding. Please be seated.

7 THE COURT: Good morning. Sorry we are starting
8 so late. As you heard this refrain before, we had some
9 matters in chambers we had to discuss outside the presence
10 of the jury. Excuse me. We're finished with those, and I
11 think now we can proceed in the courtroom. Mr. Carr, you
12 may proceed.

13 CONTINUED CROSS EXAMINATION

14 BY MR. CARR

15 Q Dr. Suskind, do you have your report of September
16 29, 1980, that is, Plaintiff's Exhibit 1500, in front of
17 you? That is the Plaintiff's Exhibit 1500, the report of
18 September 29, 1980?

19 A Yes, sir, I do, sir.

20 Q Pardon?

21 A Yes, I have it.

22 Q All right. Would you turn to page 9, please.

23 Doctor, toward the bottom of that page there's a paragraph
24 that I would like for you to explain to us the meaning of.

1 It's this paragraph--I know the jury doesn't have a copy of
2 it so I'll read it, "Another interesting observation
3 concerns the levels of HDL found in relation to persons
4 with no history of chloracne, a history of chloracne ad
5 those with residual chloracne (Table 23). There appears
6 to be less residual chloracne in the group with HDL levels
7 of 45 or more than those in the group with levels less than
8 45. Levels of 45 or greater are known to be indicative of
9 average to low risk for coronary heart disease." What does
10 that mean, Doctor?

11 A Well, studies that have been done in lipoproteins
12 in relation to coronary disease have determined that the
13 greater the HDL level, and particularly above 45, the
14 frequency of coronary disease appears to be lower; that is,
15 in the population of the United States as a whole, sir.

16 Q Well, does that mean that it's good to have HDL of
17 45 or above, and no matter how high it goes?

18 A No, it would be--yes, that's right, it would be.
19 According to those--to the epidemiologic study results
20 relating lipoproteins like HDL to the frequency of coronary
21 disease--levels higher than 45 have a lower risk, or the
22 frequency of coronary disease is lower, sir.

23 Q Now, Doctor, does that mean no matter how high the
24 HDL gets, that's good?

1 A Correct.

2 Q Because there's a reference range put in this--in
3 the METPATH laboratory of, I think, 30 to 75. And is it
4 still considered beneficial to have levels of HDL above
5 that topmost of this reference range?

6 A Yes, according to this.

7 Q All right.

8 A So, the reference range and all the reference
9 ranges in the METPATH have to be looked at with respect to
10 is out of the reference range abnormal? And in this
11 instance the--if you have a high HDL, let's say over 75,
12 from a health standpoint, according to the epidemiologic
13 study, it would be in your favor with respect to heart
14 disease.

15 Q And if it's--if it's less than 45, that would be
16 bad then?

17 A Well, not bad, but the--no, it can't be interpret-
18 ted bad, it only can be interpreted as--

19 Q Well, a greater risk, if I read this right.

20 A Right.

21 Q That you have a greater risk for heart disease?

22 A There may be a greater risk for heart disease,
23 yes, sir.

24 Q Well, is it maybe or--you say here, "It's known to

1 be indicative of average to low risk for coronary heart
2 disease." So, that would indicate--

3 A According to the national study, sir.

4 Q All right. So, above 45 would be considered low
5 risk; below 45 would be considered high risk?

6 A No, it would be a higher risk.

7 Q Higher risk; all right.

8 A Yes, sir.

9 Q So--and you picked the level of 45 here as the
10 cutoff for those two kinds of risks; did you not, sir?

11 A No, we didn't.

12 Q Well, you're the one that wrote this document, and
13 you used that value because it was of some importance or
14 significance to you?

15 A Right.

16 Q Is that properly stated?

17 A Yes. We--

18 Q All right.

19 A That's correct, sir.

20 Q Now, Doctor, and you did a Table 23 that apparen-
21 tly uses the--that you can look at to show the--yes, you
22 have levels of--three levels above--45 and above, and three
23 levels--that's the last page of the report that I've got,
24 Doctor; I don't know if it's the last page of yours or not.

1 A Yes, sir, it is.

2 Q You have three levels at 45 and above and three
3 levels that are 45 and below--I mean, below 45. Is that
4 correct, sir?

5 A Yes.

6 Q And in those two--in the columns of those that are
7 below 45, I added up somewhere earlier, and I think there's
8 53 that are below--let's see, 17 and 36--yes, that's 53
9 that are below 45; correct, sir?

10 A If your addition is accurate.

11 Q Well, I think it is this morning.

12 A That could be that, sir, yes.

13 Q I just did it earlier, so I think it is.

14 A Okay.

15 Q Well, you've got 17 in the column of no history
16 that are below 45; do you not?

17 A Well--

18 Q And you've got 36 in the column with a history of
19 chloracne; do you not? And that adds up to a total of 53--

20 A Yes.

21 Q --if 17 and 36 adds up, I think, to 53; does it
22 not, sir? Sir?

23 A Yes.

24 Q Now, really that's 50 percent of your population

1 here that has HDL levels of below 45; isn't it, Doctor?
2 You got 108 subjects--

3 A Fifty percent of this particular group, sir.

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

5 A But it may be normal for the rest of the popu-
6 lation, sir.

7 Q Doctor, I'm talking about the group that you
8 studied here, as you are aware of, the group at the
9 Krummrich Plant in Sauget, Illinois, those workers that
10 work there, sir, that's the group we are talking about.

11 A That's correct, sir.

12 Q All right, Doctor. So that I won't need to repeat
13 that again that that is the group we're talking about, been
14 talking about now for several hours; is that right?

15 A I don't believe it's necessary for you to remind
16 me we are talking about this group, sir.

17 Q Now, Doctor, why did you add to it "For this
18 group"?

19 A Because I think it has to be put into perspective,
20 sir.

21 Q Doctor, let's proceed if we might.

22 A Okay, please do.

23 Q Fifty percent of this group have got HDL levels
24 that are below 45; isn't that correct, sir?

1 A That's correct.

2 Q And, Doctor, do you have Exhibit 1507A in front of
3 you; the chart that's been prepared?

4 MR. CARR: Your Honor, we have copies. I know
5 the jury had it earlier, but they had it as early as July
6 '85, and I'd like them not to have to dig in. And I think
7 the Court needs one as well.

8 (At this time the documents were passed out to
9 the jurors.)

10 Q Now, Doctor, this Exhibit doesn't have entered as
11 abnormal lipids HDLs which are below 45--

12 A It shouldn't, sir.

13 Q Doctor, do you understand I didn't finish my
14 question when you interrupted that?

15 A Yes, sir.

16 Q As a matter of fact, I was making a statement
17 preparatory to a question.

18 A Yes.

19 MR. CARR: Your Honor, would you direct the jury
20 to disregard the statement of the doctor.

21 THE COURT: The jury is so instructed. It was an
22 improper statement; it was not responsive to any question
23 before the witness.

24 MR. CARR: And instruct the doctor not to do that

1 again.

2 THE COURT: Doctor, please, we've only been in
3 court about ten minutes. Let's try to start this day out
4 following the Court's admonitions.

5 MR. HEINEMAN: Objection, your Honor. May
6 Counsel approach the bench?

7 THE COURT: Yes.

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

10 MR. HEINEMAN: Okay, Judge, again, if indeed what
11 Mr. Carr states to this witness is a question and not a
12 speech, then the witness is entitled to answer it. If it
13 is a speech, then it shouldn't be given by Mr. Carr, and I
14 move that it be stricken and the jury be instructed to
15 disregard it. We can't have it both ways, Judge. If it is
16 a question, then the witness is entitled to respond to it.
17 Because Mr. Carr makes one of these statements and then he
18 pauses, and the witness--the Court has instructed this
19 witness that those things are questions just like anything
20 that seems to be followed by a question mark, that it's a
21 question, and so he responds to it. And then Mr. Carr
22 says, "Oh, no, wait a minute; I wasn't finished with my
23 question." Now, I object to that. I object to that
24 tactic, and I object to the Court's instruction to this

1 witness.

2 MR. CARR: Your Honor, there was no pause. Any
3 time I ask a question based upon facts that are in evidence
4 I have to state the facts to the witness so that he can
5 understand the question. I was in the process of forming
6 the question when this witness interrupted as he has in
7 many other occasions.

8 THE COURT: I think that is a correct statement
9 of what happened. It was apparent to me that it was prep-
10 aratory to a question. I've allowed both of you leeway in
11 bases that are preparatory to a question in both the direct
12 and the cross for both of you. The statement was not
13 proper; I properly advised the witness as far as that as
14 far as his conduct was concerned. We were in here less
15 than ten minutes. We were here nine minutes and fifty
16 seconds before we started on this again. He was properly
17 admonished. Maybe today we can have a reasonable opera-
18 tion of the court procedure rather than an exercise in
19 evasion. But, I think that what happened here as far as
20 making the jury to disregard this and as far as the Court's
21 admonishment to the witness was proper. It was clearly--
22 part of it was preparatory to a question and not a finished
23 question, and the witness improperly responded. I've
24 admonished this witness a number of times to wait until the

1 question is finished; that one is not capable of knowing
2 what to answer until one has heard what one is to answer.
3 So, your objection is overruled.

4 (The following proceedings were had in the
5 hearing and presence of the jury.)

6 Q Now, Doctor, this lipid column does not contain
7 the HDL findings that are below 45. It does, however,
8 contain HDL--check marks for HDLs that are above the refer-
9 ence range set out by the laboratory. Now, is it your
10 belief that those checks--is it your opinion that those
11 checks representing high levels of HDL, that is, that are
12 above the reference range of the laboratory, are in fact
13 not injurious to the worker but are beneficial--is a bene-
14 ficial thing to have?

15 A Only according to the national studies, sir, which
16 is an epidemiologic study.

17 Q Yes. And that's the national study that you've
18 relied upon for the statement that you've put in your
19 report; isn't that correct, sir?

20 A Yes.

21 Q Now, Doctor, if you added--if you subtract these,
22 there are four in number that were in this column that have
23 high HDLs according to the records that are in evidence,
24 and there are 61 total that have abnormal lab reports for

1 lipids in this chart. If you've added them up it's 61.
2 So, if you subtract those 4 HDLs, that would leave 57 yet
3 remaining in that column; would it not, sir?

4 A No, sir.

5 Q Doctor, if you subtract 4 from 61, the remainder
6 is 57; is it not, sir?

7 A You're talking about abnormal lab reports, sir?

8 Q Doctor, I'm talking about the chart that is in
9 front of you.

10 A Yes.

11 Q 1507A.

12 A Yes. And it indicates abnormal lab reports.

13 Q Doctor, I'm talking about the chart. Do you
14 understand I'm talking about this chart?

15 A Yes, sir.

16 Q All right. And, Doctor, in that chart, if you'll
17 look at Gary, for instance, you will see that there is two
18 check--two check marks for him. There should be none for
19 him because of a LDL level which was normal and because
20 the HDL is above the reference range. And, Doctor, if you
21 look at Harper, you'll see a check in there in that column
22 for Harper; will you not, sir?

23 A What is his name, sir?

24 Q Harper; 23 years of age, sir. On the first page,

1 Dr. Suskind. Harper.

2 A Harper. Okay.

3 Q About three-quarters of the way down. That check
4 mark according to the records represents a high HDL, and
5 for that reason, since it is not injurious to the worker,
6 it certainly cannot be considered, if it is outside the
7 reference range, it certainly cannot be considered some-
8 thing that is bad; can it, sir?

9 A I can't say, sir.

10 Q Doctor, didn't you just agree that a high HDL is
11 good?

12 A No. I said a high HDL according to this study has
13 along with it a lower risk for heart disease.

14 Q Doctor, I'm sure what you said to us earlier was
15 that having a high HDL is good for the person, it's bene-
16 ficial to him; he has a lower risk of heart disease than
17 those persons with HDLs below 45. Isn't that exactly what
18 you said, sir?

19 A Yes, that's what I've said. But, these are
20 abnormal lab reports, and that's wrong, sir.

21 MR. CARR: Your Honor, would you instruct the
22 witness to listen to my question and not go beyond it. I
23 didn't ask him--

24 THE COURT: Doctor, you have gone beyond it. You

1 weren't asked that question.

2 THE WITNESS: I'm sorry, but--

3 THE COURT: Keep your responses, please, to the
4 question that's asked of you.

5 Ladies and gentlemen of the jury, that remark was
6 not proper; I'm ordering you to disregard it. You may
7 proceed.

8 Q Doctor, you have agreed that having high HDL, that
9 is, above the reference range and above 45, is beneficial
10 to the person that has that HDL level; have you not?

11 A No, I didn't say so. I said according to the
12 report, it may be.

13 Q All right.

14 A It may be. There's a big difference, sir.

15 Q All right, Doctor.

16 A Like there's a big difference between abnormal and
17 out of range.

18 MR. CARR: Your Honor, would you instruct the
19 witness that that's improper for him to say that and
20 instruct the jury to disregard what he said.

21 THE COURT: Doctor, please try to restrain
22 yourself to the question that's asked of you. This is
23 twice in a row that you've gone beyond the question that's
24 been asked of you. Ladies and gentlemen of the jury, you

1 are ordered to disregard that remark. It was not proper;
2 it was not responsive to any question that was before the
3 witness.

4 Q Doctor, according to this report, HDLs above 45 is
5 beneficial to the person having the HDLs; is that correct?

6 A It might be, sir.

7 Q It may be; is that correct?

8 A It might be.

9 Q It might be; is that correct, sir?

10 A That's correct.

11 Q Thank you, Doctor. Now, Hergenroeder also,
12 according to the records, he has one check in the lipid
13 column, sir, and that also represents a high HDL. Do you
14 understand that, sir?

15 A No, I don't, sir, but if you say so, I'll assume
16 that it is true.

17 Q All right. And, Doctor, finally, Lester, on the
18 next page, also has one check mark in his column for the
19 abnormal lab report lipids, and that represents a high HDL
20 as well that is--

21 A No, sir.

22 Q Doctor, I didn't finish my question. Do you
23 understand I hadn't finished my question?

24 A I thought you had; I apologize.

1 Q And, Doctor, that representing a high--a level of
2 HDL that's above 45, according to this report that you
3 referred to, it is beneficial to the person to have a
4 high--an HDL above 45; is it not, sir?

5 A I might be, sir.

6 Q That it might be beneficial; is that correct?

7 A It might be.

8 Q All right. Now, Doctor, on the other hand, Burke;
9 on the first page, Carter, G; Esmon; Gundlach, Jackson on
10 that page; Kistner; Krack; Malanowsky; McDonnell; Nord-
11 hause; Purkey, Reeves; Rensing; Richardson; and Schrock
12 have no check marks for lipid abnormalities in that column;
13 do they, sir?

14 A I don't believe so.

15 Q But, all of the other persons according to the
16 records have HDL levels of below 45, according to these
17 records, Doctor. Now, if that is the fact, sir, according
18 to this report, that's 17 people in number, and that 17
19 added to the 58 remaining--57 remaining in the abnormal
20 lipid column, if indeed it is abnormal--assuming that sir--

21 A It is not, sir.

22 MR. CARR: Your Honor, would you direct the
23 witness that he has again interrupted me and instruct the
24 jury to disregard it.

1 THE COURT: Doctor, please, that was obviously--
2 that was obviously not the end of the question that was
3 being asked of you. I've asked you before to wait until
4 the question is finished so you know what you are supposed
5 to answer. The remark was improper. Ladies and gentlemen
6 of the jury, you are ordered to disregard the remark that
7 was made.

8 Q Now, Doctor, if that is a fact, 17 added to 57
9 gives us 74 with lipid levels that are either abnormal
10 according to the laboratory report or which are below the
11 level of 45; isn't that correct, sir?

12 A No, sir.

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

15 A It is absolutely incorrect.

16 THE COURT: Doctor. Doctor. Doctor. There's an
17 objection being made. Please wait until I rule on the
18 objection before you answer the question.

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

21 MR. HEINEMAN: Your Honor, the question asked by
22 Mr. Carr assumes and said if you assume that it's abnor-
23 mal to be below the 45 level. That is incorrect.

24 MR. CARR: No, I didn't say that.

1 MR. HEINEMAN: Oh, yes you did, Mr. Carr.

2 MR. CARR: I did not.

3 MR. HEINEMAN: Yes, you did.

4 MR. CARR: No, I did not.

5 MR. HEINEMAN: Yes, you did. And it's absolutely
6 incorrect. Even Dr. Carnow admits that a finding below 45
7 is not abnormal; that all the Framingham study demonstrates
8 is risk surrounding that figure, that there isn't a normal
9 or abnormal for HDL, according to the reports that Dr.
10 Carnow interpreted in this courtroom. And so, it is abso-
11 lutely misleading and incorrect to ask this witness or to
12 even suggest to this witness that a reading below 45 is an
13 abnormal lipid reading on an HDL.

14 MR. CARR: If you listened to my question, it did
15 not describe the HDL as abnormal. And if you would read
16 the question back to the Court if the Court has any ques-
17 tion on it.

18 THE COURT: I don't have any question about it.

19 MR. CARR: All right.

20 THE COURT: I didn't hear it described as
21 abnormal either. Your objection is overruled.

22 (The following proceedings were had in the
23 hearing and presence of the jury.)

24 MR. CARR: Would you read that question back to

1 the witness, please?

2 (At this time the previous question was read back
3 by the court reporter, as requested.)

4 A No, sir.

5 Q Doctor, are you assuming that there are 17 that
6 are below the level of 45, according to the records?

7 A I am.

8 Q Are you assuming that there is 57 that are above
9 the laboratory reference range values given, Doctor?

10 A Above?

11 Q Outside--either--outside the reference ranges
12 given by the laboratory? Are you assuming there are 57
13 such lipid reports for individuals, sir, that have one or
14 more such outside the reference range values? Are you
15 assuming that, sir?

16 A If you want me to assume it, I will.

17 Q That is what I am asking you to assume that the
18 records show us.

19 A Okay.

20 Q Now, are you assuming that, sir?

21 A I am.

22 Q Now, are you assuming that there are 57 of these
23 people that have lipid values that are outside the refer-
24 ence range established by the laboratory for these lipid

1 values? Are you doing that, sir?

2 A I am.

3 Q And there are 17, sir, that have HDL levels of
4 below 45. Are you assuming that, sir? In addition to the
5 57. Are you assuming that, sir?

6 A If you want me to assume it.

7 Q I'm asking you to assume that that's what the
8 facts show.

9 A Okay, I'll assume it, sir.

10 Q Doctor, that is 74 in number; is it not, sir?

11 A It adds up to 74.

12 Q Now, Doctor, 74 is what percentage of the 108
13 involved, sir?

14 A Seventy-four is not abnormal, sir.

15 MR. CARR: Your Honor, would you direct the
16 witness to listen to my question and respond to my
17 question.

18 THE COURT: Doctor, that was not responsive to
19 the question. Listen to the question and answer the ques-
20 tion that's before you and not something else that you want
21 to say, please.

22 Q Doctor--

23 THE COURT: Ladies and gentlemen of the jury, you
24 are ordered to disregard that remark. It was not properly

1 made.

2 Q Now, Doctor, 74 is 68 percent of the total; is it
3 not, sir?

4 A Sixty-eight percent of what, sir?

5 Q One hundred eight workers.

6 A And what do they represent, sir?

7 Q Excuse me, 108 workers in this study that you--

8 A And what does 57 represent, sir?

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

10 A I don't know what you are talking about.

11 THE COURT: Doctor. Doctor. You are not asking
12 the questions. Listen to the questions and answer the
13 questions you are asked.

14 A I cannot answer that question, sir, because a
15 yes--

16 THE COURT: Doctor. Doctor, just wait for the
17 next question, please. Go ahead, Counsel.

18 Q Doctor, 74 is 68 percent of 108; is it not, sir?

19 A If you are referring to straight numbers without
20 referring to this particular document, yes; but, it cannot
21 refer to this document, sir.

22 MR. CARR: Your Honor, would you instruct the
23 witness he's gone beyond the scope of my question and order
24 the jury to disregard it.

1 THE COURT: Doctor, as far as percentages, over
2 50 percent of the questions that you've been asked in the
3 last five minutes you've answered improperly. You have
4 gone way beyond the scope of the question. I am admon-
5 ishing you to listen to the question, wait until the entire
6 question is asked of you so that you know what you've been
7 asked, and keep your answers within the scope of the
8 question that's been asked of you. Ladies and gentlemen,
9 you are ordered to disregard the last remark that was made
10 by the witness. It was not proper. You may proceed,
11 Counsel.

12 Q Now, Doctor, you do agree that it would be unusual
13 or strange for as few as 56 percent to have lipids outside
14 the established normal reference range; don't you, sir?

15 A No, sir, absolutely not. I do not agree at all.

16 Q You don't agree with that at all?

17 A At all. Absolutely.

18 Q And if you said that yesterday, you would have
19 been lying yesterday?

20 A No. You asked me two questions yesterday, sir.

21 Q Doctor, listen to this question that was asked of
22 you yesterday.

23 A I know what the question is.

24 Q Doctor, would you listen to the question, please.

1 "Now, Doctor, do you think it unusual or strange that 60
2 people, that is 56 percent, would have lipids outside the
3 established normal reference ranges?" And your answer was,
4 "If it were absolutely true, yes." Wasn't that your answer
5 yesterday?

6 MR. HEINEMAN: Objection, your Honor. May
7 Counsel approach the bench?

8 THE COURT: Yes, you may.

9 (The following proceedings were had outside the
10 hearing and in the presence of the jury.)

11 MR. HEINEMAN: Now, the Court will recall, I
12 know, when I was cross examining Dr. Carnow and I would
13 refer to a portion of the testimony for impeachment
14 purposes and Mr. Carr would suggest, "Well, why don't you
15 read in the other pages? Why don't you read on?"

16 MR. CARR: I intend to read the rest of it,
17 Counselor, after I establish this first.

18 MR. HEINEMAN: That is absolutely misleading
19 based upon what the doctor was asked immediately after
20 that.

21 MR. CARR: No, it's not at all misleading, and I
22 intend to read the rest of it.

23 THE COURT: Let me, so I can rule on it, let me
24 see it.

1 MR. CARR: This is the question that I just
2 asked. This question was previous to these questions.

3 THE COURT: Now, wait a minute.

4 MR. CARR: This question was asked first and then
5 these questions.

6 THE COURT: Okay.

7 MR. CARR: This is the question I just read to
8 him and then his answer. I simply asked him so far whether
9 or not he said that yesterday.

10 MR. HEINEMAN: For the record, your Honor, so
11 that this will show up. The first question and answer that
12 Mr. Carr just read is followed by--

13 THE COURT: Well, I'd rather xerox this and make
14 it part of the record rather than take the time at a bench
15 conference to do that. I've read it; you may continue with
16 your argument.

17 MR. HEINEMAN: Your Honor, I would like to say
18 that what the doctor continues to say is that Mr. Carr asks
19 him, "If 56 percent of the population to have abnormal
20 lipids." It's that which the doctor said would be strange.
21 "If they have abnormal lipids."

22 MR. CARR: Didn't he say that it were absolutely
23 true? Didn't he respond to that question?

24 MR. HEINEMAN: You noticed he used the terms

1 "normal"--

2 MR. CARR: --"reference range". Exactly.

3 MR. HEINEMAN: And a reference range doesn't make
4 the determination normal or abnormal, Mr. Carr. Even Dr.
5 Carnow admitted that.

6 THE COURT: I've read this matter which will be
7 xeroxed and incorporated into the record. I don't think it
8 was misleading. Your objection is overruled. It was
9 proper impeachment.

10 (The following proceedings were had in the
11 hearing and presence of the jury.)

12 Q Doctor, you do recall now, do you, sir, that that
13 was your answer to that question?

14 A I recall it, and it's incorrect, sir. I was
15 wrong. It was late in the day and there were two ques-
16 tions, one about whether or not abnormal values, 56 percent
17 abnormal values would be unusual, and I said yes. But, out
18 of range is not the same as abnormal. And you indicated--

19 MR. CARR: Your Honor, the witness has gone well
20 beyond the--

21 A I'm sorry, I'm sorry; that's all I have to say.

22 Q Doctor, you do now agree that you said yesterday
23 that if 56 percent would have lipids outside the estab-
24 lished normal reference range, that would be unusual or

1 strange. Correct, sir?

2 A I said that, and it's incorrect, sir.

3 Q All right. And then, Doctor, you want on to say
4 right after that question this question was asked:

5 "Doctor, if it's accurate, it would be indeed passing
6 strange, would it not, sir?"

7 A Not with respect to that, with respect to--

8 THE COURT: Doctor, please.

9 Q This is what the record shows, Doctor. Let me
10 start from the top. "Now, Doctor, do you think it unusual
11 or strange that 60 people, that is 56 percent, would have
12 lipids outside the established normal reference ranges?"
13 Your answer was, "If it were absolutely true, yes." And
14 then this question, "Doctor, if it's accurate, it would be
15 indeed passing strange, would it not, sir?" "ANSWER: If
16 it were accurate, one would have to--" "QUESTION: Let me
17 finish, please. Let me finish my question, please, sir.
18 The 56 percent of the population to have abnormal lipids?"
19 "ANSWER: If it were accurate, it would be strange, sir,
20 yes." "QUESTION: And, Doctor, is that the kind of an
21 effect you would expect from exposure and other absorption
22 to toxic substances, to certain kinds of toxic substances?"
23 Your answer was, "Certain kinds of toxic substances, yes."
24 Wasn't that your answer to those--

1 A This was my answers, sir.

2 Q --questions at that time, Doctor?

3 A Indeed it was.

4 Q Yes.

5 A And I stick by it. For abnormal values.

6 MR. CARR: Your Honor, would you instruct the
7 jury to disregard the latter statement of the witness and
8 instruct the witness that his answer is improper.

9 THE COURT: Doctor, again, you've gone way beyond
10 the question. Your response was not responsive to the
11 question. Ladies and gentlemen of the jury, you are
12 ordered to disregard the last response.

13 MR. HEINEMAN: Your Honor, may Counsel approach
14 the bench for a minute?

15 THE COURT: Yes.

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

18 THE COURT: It's about 11, and although we
19 haven't been in court for the full time, the reporter has
20 been working the full time. I'd like to take a short break
21 now. In view of the frequencies of the improper responses
22 of this witness, I would like you again, Mr. Heineman, to
23 talk to this witness over the break and try to explain to
24 him again the court rules as far as making answers--

1 responses--that are responsive to the question that's being
2 asked, no less and no more than the question that is being
3 asked. He's at an extremely high frequency of doing that
4 this morning, and it's not really a good way to start off
5 the day.

6 MR. HEINEMAN: Your Honor, when you were asking
7 us to approach the bench I was objecting at the same time
8 and asking to approach the bench.

9 THE COURT: Okay.

10 MR. HEINEMAN: Because I wanted to object to what
11 you just did in instructing this jury to disregard the
12 witness' answer. Do you mind turning around and facing the
13 Judge as he's ordered you to do, or do you want to preen and
14 prance in front of the jury?

15 MR. CARR: Counsel, as you know, I'm looking
16 directly at you; I'm not even half way looking at you,
17 because you are speaking. When the Judge is speaking, I'm
18 looking at him. I'm now looking at you as you are now
19 looking at me.

20 MR. HEINEMAN: The Judge has ordered you, Mr.
21 Carr, to face him, as he has ordered me to face him, and I
22 would appreciate if you would obey the Judge's orders.

23 THE COURT: Okay, gentlemen, come on.

24 MR. HEINEMAN: Now, your Honor, to say that the

1 addition of the statement, "And I stick by it" is not
2 responsive to the question and therefore should be disre-
3 garded by the jury is in my view ridiculous. It is clearly
4 responsive to the question. He is asked, "Is that your
5 testimony?" He said, "Yes, that's my testimony, and I
6 stick by it." Now, that is not a nonresponsive answer, and
7 I object to the Court instructing this jury that it is and
8 instructing the jury to disregard it.

9 MR. CARR: Counsel, he even went beyond that.
10 Apparently you didn't hear him, but he went beyond saying,
11 "I stick by it." He said something else, it was abnormal
12 or not normal or something of this sort in addition to
13 that.

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

15 MR. CARR: He most certainly did.

16 THE COURT: Yes, he did. And that was the part
17 that was not responsive. Technically the "sticking by it"
18 is not something that he was asked, but it's reasonably
19 germane to the question that was asked. But, the parts
20 about normal--about the abnormal, rather, that he started
21 into afterwards and were properly interrupted by Mr. Carr
22 were not responsive. And that part was properly inter-
23 rupted; that part. The jury was properly admonished to
24 disregard that point. The part of the question--answer,

1 rather, that you noted arguably is responsive to the
2 question; I didn't have any problem with that part. So,
3 your objection is overruled, and let's take a break. If
4 you would do that as part of the break, I would appreciate it.
5

6 (The following proceedings were had in the
7 hearing and presence of the jury.)

8 THE COURT: Ladies and gentlemen, we're going to
9 take a short break at this time and then we will resume it.
10 I would remind you during any of these breaks you are not
11 to discuss this matter among yourselves, with anyone
12 outside the jury panel, or as of yet form any opinions or
13 conclusions about the matters on the trial. Court is in
14 short recess.

15 (At this time a recess was taken.)

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

18 THE BAILIFF: Everyone please rise. You may be
19 seated.

20 Q (By Mr. Carr) Doctor, you are familiar, of course,
21 with the Moses-Selikoff study, Defendant's Exhibit SOB?

22 A Yes, I am familiar with it, sir.

23 Q And do you have a copy of that in front of you?

24 A No, I do not, sir.

1 MR. CARR: Would you give Defendant's Exhibit 908
2 to the witness.

3 Q And page 178 of that exhibit, Doctor. There is in
4 that report--in that study--a statement with reference to
5 heart disease or deaths from heart disease at Nitro; is
6 there not, sir?

7 A Yes, there is a statement about that.

8 Q And, Doctor, Plaintiff's Exhibit 174B shows--we've
9 discussed this earlier--the cause of deaths of those--of
10 the 36 that you had examined in 1953, it shows the cause of
11 death. And that exhibit shows that the heart disease was
12 the greatest cause of death, does it not, in those 36?

13 A I believe it does.

14 Q Yes. And Doctor, Dr. Moses also points out that
15 there is a higher coronary heart disease death rate in the
16 study group than is in the United States population rates.
17 Do you see that, sir?

18 A Yes, I see it. That's not her work, sir.

19 Q Doctor, I'm aware of that. But, my question is:
20 Doesn't Moses and Selikoff make that statement in their
21 report and they attribute it to Zack-Gaffey; do they not,
22 sir?

23 A Yes, I believe they do, sir.

24 Q And you, of course, are familiar with the Zack-

1 Gaffey study in which they found in the workers that they
2 studied that there was a higher mortality rate--that first
3 of all the S.M.R. for the diseases of the circulatory
4 system was elevated, and they said it is most likely a
5 reflection of the high mortality of heart disease that has
6 been observed for Charleston and West Virginia, and they
7 also found that for the total Nitro plant study popula-
8 tion there was a statistically excess in deaths from
9 arteriosclerotic heart disease and a deficit in deaths from
10 other circulatory diseases. You are familiar with that?

11 A If they are referring to the Zack-Gaffey study.

12 Q Yes.

13 A That's what the Zack-Gaffey apparently found.

14 Q Yes. And, Doctor, the heart disease rate for
15 these workers is elevated; is it not, sir? According to
16 Zack-Gaffey?

17 A The--according to Zack-Gaffey for the whole popu-
18 lation, yes.

19 Q And, Doctor, the Krummrich plant workers--and
20 that's among a group of chemical workers, is it not, sir,
21 that's working with chlorinated phenols--the group that was
22 studied by Zack-Gaffey?

23 A No, they studied all of the workers, sir. They
24 studied all the workers in the whole plant.

1 Q No, Doctor, they studied the workers who were
2 exposed to the 2,4,5-T production, sir; they didn't study
3 the workers in the whole plant.

4 A I believe--

5 Q You are familiar--

6 A I believe that the total number of people in the
7 Zack-Gaffey population, the 884, are all the workers in the
8 plant, sir.

9 Q Doctor, you are aware--well, I'll even accept
10 that, Doctor; I won't even quarrel with that, Doctor. And
11 that shows that for the workers in that plant--in that
12 chemical plant then, doesn't it, sir, that they had this
13 higher death rate; does it not, sir?

14 A According to that particular study, sir.

15 Q Yes. And of course, the--we have previously
16 established the extent of the contamination of that plant
17 in which all of those workers might well be exposed, have
18 we not, sir, as shown by Plaintiff's Exhibit 1527B, sir?

19 A You have pointed it out to me.

20 Q Yes.

21 A I don't happen to agree with it, but that's
22 besides the point, sir.

23 Q Yes, it is beside the point, Doctor. I believe it
24 is, because that's already been established. Now, the

1 higher death rate in those workers that had this kind of
2 exposure is supported, is it not, or rather it's consis-
3 tent with the lipid out of reference range reports as shown
4 in Exhibit 1507A and consistent with the HDL levels in 55
5 people at the Krummrich plant that were below 45; isn't
6 that correct?

7 A No, sir, it's not.

8 Q Doctor, did you not say--and one step at a time--
9 did you not say, sir, that the 55 that had these low
10 levels, that is below 45 HDL limits, that they were at a
11 greater risk according to the Framingham study?

12 A They may have a higher risk for heart disease.

13 Q Isn't that what you said, sir, according to the
14 Framingham study they have a higher risk?

15 A According to the study that was done, that demon-
16 strated that, sir, yes.

17 Q And, Doctor, 50 percent--I think it was 53
18 actually was the number--50 percent of the, according to
19 your report, 50 percent of the population at Sauget, Illi-
20 nois are at that greater risk according to the Framingham
21 study; is that correct, sir?

22 A No, sir.

23 Q Doctor, didn't we establish that 53 had HDL levels
24 of below 45?

1 A We did.

2 Q All right. And didn't we also establish that
3 according to the Framingham, that puts them at a greater
4 risk of heart disease?

5 A It might put them at--

6 Q Didn't we establish that?

7 A There's a difference between it does and it might.

8 Q Well, Framingham said that according to their
9 studies the people who have HDL levels of below 45 are at
10 greater risk is what they said; isn't that correct?

11 A No, they said they might be at greater risk.
12 Because when you are dealing with statistics, there's
13 nothing absolute about it, sir.

14 Q Doctor, I understand that. But, they said
15 according to statistics, did they not, sir, as you stated
16 earlier this morning I thought, those that have lower
17 levels are at greater risk; those that have higher levels,
18 no matter how high it goes, are at a lesser risk. Isn't
19 that what you said?

20 A They might be at a lower risk or they might be at
21 a higher risk.

22 Q I won't quarrel with that, Doctor. We'll accept
23 that so we won't go on arguing about the might be or can be
24 or are. According to Framingham, 50 percent of the popu-

1 lation at the Krummrich Sauget, Illinois plant may be at a
2 greater risk of dying from heart disease than the average
3 United States population; isn't that correct?

4 A No.

5 Q Sir?

6 A No. No.

7 Q Doctor--

8 A They are--

9 Q Didn't we establish that 53 have this risk factor,
10 sir? That's 50 percent of the population?

11 A That's right. But, you said dying of heart
12 disease. It's the greater risk for having heart disease;
13 for having. That's different, sir.

14 Q Doctor, then it follows, does it not, sir, that if
15 you have heart disease, that you are at a greater risk of
16 dying from heart disease if you've got it?

17 A You might be; it also depends on how you treat it.

18 Q You might get shot before you have your heart
19 attack, or you might die of cancer before you have a heart
20 attack, or something else might cause your death. But, if
21 you have that heart disease, you are at risk from dying
22 from it; are you not, sir?

23 A You might be at risk, sir. It all depends on how
24 you treat it, sir.

1 Q Yes, Doctor. And 50 percent of the populaion that
2 you studied at Sauget, Illinois had this particular risk
3 for heart disease?

4 A No, sir, I do not agree with that.

5 Q Doctor, does 50 percent have lower than 45?

6 A So what?

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

9 THE COURT: Doctor, that question was not
10 responsive to the question. Answer the question that's
11 asked of you, sir.

12 A Fifty percent according to your figures have a
13 level below, an HDL level below 45.

14 Q Now, Doctor, it's not my Figures; I did not take--
15 examine these workers; I did not conduct the HDL. Accor-
16 ding to the figures that you found and that you reported,
17 sir, 50 percent of these workers have HDL levels of below
18 45; isn't that correct, sir? According to what you did?

19 A I don't know; I didn't add them, sir; you did.

20 Q Now, Doctor, you said you had no quarrel with that
21 fact, sir.

22 A I have no quarrel, because I believe you.

23 Q All right, Doctor. Then--

24 A I believe your mathematics, sir.

1 Q You believe that the figures were taken from your
2 reports; don't you, sir?

3 A I would hope so.

4 Q You believe that; don't you, sir?

5 A Yes, I have confidence that what you're saying is
6 accurate.

7 Q Well, Doctor, look at your own table, Table 23,
8 your report, sir. Don't take my word for it; take your
9 report, sir.

10 A Yes.

11 Q Didn't we establish that according to your report,
12 sir, 53 of these people have levels below 45? Didn't we
13 establish that, Doctor, according to your report?

14 A Yes, I believe that if you count them up, that's
15 what they come to.

16 Q And, Doctor, those are your figures; are they not,
17 sir?

18 A Yes, the figures that are--

19 Q And that is your report; isn't it, sir?

20 A That is in the report of September of 1980, sir.

21 Q And adding up your reports, sir, it shows that 50
22 percent of the population that you studied at Sauget, Illi-
23 nois, just a few miles from here, have a greater risk of
24 heart disease than the average population; isn't that

1 correct, sir?

2 A That is not, sir.

3 Q Didn't you say, sir, that 45 is the level, sir?
4 That you have an above average risk for heart attack, sir?

5 A According to an epidemiologic study, sir.

6 Q Yes, Doctor, that's what I'm referring to.

7 A Yes.

8 Q According to this study, sir, 50 percent--listen
9 to me, Doctor--according to this study of yours, sir, and
10 according to the Framingham study, 50 percent of the plant
11 population that you studied and reported upon have a
12 greater risk than average of heart disease; have they not,
13 sir?

14 A No, sir.

15 Q What is inaccurate about that statement, sir?

16 A The inaccuracy, sir, is that you have to compare
17 the population of the Krummrich group to a matched, which
18 the Framingham study did, a matched in age and sex and
19 economic level with a control population.

20 Q Isn't that what Framingham did?

21 A They did, but we didn't.

22 Q Yes, Doctor, according to the Framingham study
23 which had the control group which developed these figures,
24 Doctor, according to that study, if you use that study as a

1 guide by which to analyze the Sauget people, which you did,
2 sir, 50 percent of your group have levels lower than 45
3 HDL; don't they, sir?

4 A Fifty percent have levels of below 45, that's
5 true.

6 Q And if the Framingham--and the Framingham study
7 says that people with levels lower than 45 are--may be at
8 greater risk of contracting heart disease; does it not,
9 sir?

10 A They may be, yes.

11 Q Isn't that what it says, sir?

12 A That's what it says; it may be.

13 Q And therefore, if that applies to your Sauget,
14 Illinois population, then if it applies--Doctor, now are
15 you assuming that it applies? Are you going to assume that
16 it applies, Doctor, so I don't have to go through this
17 again.

18 MR. HEINEMAN: Objection, your Honor. May
19 Counsel approach the bench?

20 THE COURT: Yes, you may.

21 (The following proceedings were had out of the
22 hearing and in the presence of the jury.)

23 MR. HEINEMAN: I object to his asking the witness
24 to assume that the Framingham study applies to the Sauget

1 population. There's no evidence to support that. The fact
2 of the matter is, as the doctor has just said, the Framing-
3 ham study is an epidemiological study. And an epidemio-
4 logical study was not performed at Krummrich. Krummrich
5 group was not compared to a control group. That's why the
6 doctor says that you can't make that same conclusion; you
7 can't say that they would have a higher risk of heart
8 disease. And therefore, it's misleading and it's inac-
9 curate to ask him to assume that it does apply. There's no
10 basis for such an assumption in the record at all.

11 MR. CARR: Your Honor, the basis is the doctor
12 himself used the Framingham study in his September 1980
13 report, and I just asked him about it. He himself referred
14 to the 45 level and being at average or greater risk or
15 lower risk if you are above or below. He himself applied
16 it to the Sauget group.

17 THE COURT: He did. Your objection is overruled.

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

20 Q Now, Doctor, are you assuming that it applies to
21 the Sauget group?

22 A I am not.

23 Q You are not assuming?

24 A No.

1 Q Now, Doctor, you applied it yourself to the
2 Sauget, Illinois group; did you not, sir?

3 A No, we mentioned the fact, sir. We didn't apply
4 it, sir.

5 Q Well, Doctor, didn't you mention it?

6 A We mentioned it as a--

7 Q Didn't you refer to it? And didn't you use it in
8 your Table 23? Didn't you use it yourself, Doctor?

9 A We mentioned it and we cited--

10 Q Doctor, my question is: Didn't you use it
11 yourself?

12 A No, we didn't; we simply recorded it, sir.

13 Q You recorded it in the reports that you made to
14 the Sauget people; didn't you, sir?

15 A Right.

16 Q And used it in your report; didn't you, sir?

17 A We simply reported it.

18 Q Doctor, did you use it or not? Is it not there or
19 not?

20 A In what?

21 Q In your report, Doctor.

22 A What's in my report? The fact that--

23 Q The use of the Framingham study? Do you want to
24 look at it?

1 A Sure. We have already gone through that, Mr.
2 Carr.

3 Q Yes.

4 A We have. It isn't a matter of use; it's a matter
5 of comment. And that's different, sir. In order to be
6 completely accurate and scientific, we felt it was neces-
7 sary to say this. But, to apply it to this group one needs
8 a control; one has to have the other people in Sauget,
9 Illinois who do not work at the plant. And it's very
10 likely, sir, that 50 percent of those might have levels
11 below 45.

12 Q Well, Doctor, it may be very likely that they all
13 have it below, or they all have it above, or they all have
14 it in between. And that's not what I am asking you,
15 Doctor. You did say in your report, did you not, sir,
16 "Levels of 45 or greater are known to be indicative of
17 average to low risk for coronary heart disease." Didn't
18 you say that, sir?

19 A We did say that, sir.

20 Q You said that as a known fact; didn't you, sir?

21 A We said that because of the study.

22 Q Excuse me, I didn't ask you because, I asked you:
23 You said that as a known fact; didn't you, sir?

24 A The fact that there was a study.

1 Q Doctor, no, you said levels of 45 or greater are
2 known to be indicative; did you not, sir?

3 A All right, by a single study.

4 Q Didn't you say that, sir?

5 A We did; sure we did.

6 Q All right. Now, Doctor, using that level which
7 you used, assuming now that that applies, sir--will you do
8 that, sir?

9 A I will not, sir, because it does not apply, sir.

10 MR. CARR: Your Honor, would you direct the
11 witness to assume that it applies.

12 THE COURT: Doctor, you are ordered to assume
13 that for purposes of these questions.

14 MR. HEINEMAN: May we have a continuing
15 objection--

16 THE COURT: Yes, you may.

17 MR. HEINEMAN: --to that?

18 THE COURT: You may. Proceed Mr. Carr.

19 Q Now, Doctor, are you going to follow the Court's
20 order?

21 A I have to sir; yes, sir.

22 Q Assuming that that applies, Doctor, 50 percent of
23 the population at the Sauget, Illinois plant may have
24 greater risk of coronary heart disease; might they not,

1 sir?

2 A No, sir.

3 Q Are you assuming it applies?

4 A Yes, I am assuming, sir.

5 Q Are you assuming that 50 percent have levels--

6 A I am indeed, sir.

7 Q --have levels below that, sir?

8 A I am.

9 Q And it does apply, Doctor. Now, and 50 percent
10 have lower than that level; do they not, sir?

11 A I don't know what that question means, sir.

12 Q Are you assuming that lower than 45 may indicate
13 risk of heart disease greater than average? Are you assum-
14 ing that?

15 A I have been asked to assume that, sir.

16 Q And every person that has below that may be at
17 greater risk; may he not, sir?

18 A No, sir.

19 Q Now, Doctor, you are not assuming it; are you?

20 A I am.

21 Q Are you assuming that every person that has lower
22 than 45 HDL level may be at greater risk of heart disease?
23 Are you assuming that?

24 A That's what you are asking me to assume, yes.

1 Q Yes. So, every person below that may be at
2 greater risk; correct, sir?

3 A No, sir.

4 Q Now, Doctor, you are not assuming--

5 MR. CARR: Your Honor, would you instruct the
6 witness to assume it.

7 THE COURT: Doctor--

8 THE WITNESS: I am, sir.

9 THE COURT: No; no. If you can come up with that
10 other answer, you are not. I am ordering you to assume
11 that which has been stated to you by Counsel to assume.

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

14 THE COURT: Yes, you may.

15 (The following proceedings were had out of the
16 hearing and in the presence of the jury.)

17 MR. HEINEMAN: Your Honor, I object to that
18 statement you just made. If you don't mind, I'm thinking
19 the Court is entering his appearance on behalf of the
20 plaintiff here. When you make a statement like, "If you
21 can come up with an answer like that, you are not assuming
22 that" you can't comment like that in front of this jury,
23 and I object to it. I object to it. I think it is abso-
24 lutely outrageous for you to make a statement like that to

1 this witness and in front of that jury. And I object to
2 it and I think a mistrial ought to be declared right now
3 for you to make that kind of a comment with respect to this
4 witness and in front of this jury.

5 MR. CARR: Your Honor, I think it's completely
6 appropriate for the Court to make that comment plus more,
7 because it's perfectly obvious this man is flaunting your
8 orders. He is not assuming--

9 THE COURT: In order for him to make those two
10 statements which are logical impossibilities, he has to be
11 either deaf, dumb, or blind. They are not possible. If he
12 can make that, he is not assuming that to which he was
13 asked to assume and which he said he would assume. I
14 ordered him to assume it. My comment was proper; it was
15 within the scope of what I am allowed to do; and I am
16 denying your Motion for a mistrial. I would suggest that
17 in the noon break that you talk to him again about the
18 rules of Court, this time with emphasis about actually
19 accepting the assumptions that are given to him and
20 operating on them rather than saying that he accepts them
21 and then not accepting them and using them for the purpose
22 of the question with which they are asked. Your objection
23 is overruled; your Motion for a mistrial is overruled. It
24 appears to be groundless.

1 MR. HEINEMAN: Your Honor, nobody asked this wit-
2 ness why. All you got were argumentative questions by Mr.
3 Carr and then this ruling by the Court. You are saying--
4 you are interposing your expertise over that of this
5 witness. You are saying he cannot make an answer like
6 that, when nobody has asked him why. This man is an
7 expert. He is a physician. He has an opinion. And nobody
8 has asked him why. And yet, you make a conclusion, you say
9 as a Judge, "I know that he can't be answering that accur-
10 ately." Well, you don't know that, Judge. You don't know
11 that.

12 THE COURT: I most certainly do. And it's my
13 obligation to see that rules of this Court are not
14 flaunted, evaded, as this witness is trying to do. And I
15 will continue to do that. If you want to object to it, you
16 may go ahead and object. I am going to discharge my
17 responsibilities in this trial. Again, I want you to talk
18 to this man as part of his accepting assumptions. He is
19 obviously not doing what he said he would do accepting
20 assumptions, and it's something that should be reviewed.
21 Your objection is overruled and your Motion is denied.
22 Let's proceed.

23 (The following proceedings were had in the
24 hearing and presence of the jury.)

1 Q Now, Doctor, once again, are you assuming that
2 according to the Framingham study, sir, that everyone that
3 has an HDL level of lower than 45 may be at a risk, a
4 greater risk than average of having coronary heart disease?
5 Are you assuming that, sir?

6 A If you ask me to, I am assuming it, sir.

7 Q So, if one has a level--if everyone that has a
8 level of low HDL may be at greater risk, then if one has a
9 level lower than 45 HDL, he is according to Framingham at
10 greater than average risk?

11 A That's a complicated question.

12 THE WITNESS: Would you repeat it, and slowly,
13 please, because I don't understand it.

14 Q Let me explain it to you, Doctor.

15 A Well, let me hear the question.

16 Q Doctor, let me explain it to you. You said you
17 are assuming that everyone, according to Framingham, that
18 everyone according to Framingham who has HDL levels of
19 below 45 may be at greater than average risk of having
20 heart disease. You agreed to do that; didn't you?

21 A Is that a new assumption or an old assumption?

22 Q No, Doctor, that's the old one. You agreed to do
23 that; didn't you?

24 A The old one said that persons, not everybody.

1 Q No, it said everyone.

2 A Well, I didn't understand it that way, sir.

3 Q Well, that's what it said. Now, are you assuming
4 that everyone--

5 A If you are changing your statement and I assume
6 it, I will have to assume it.

7 Q Doctor, I'm not changing my statement.

8 THE COURT: Doctor, please don't interrupt
9 Counsel when they are asking the question. Listen to the
10 question, please.

11 MR. CARR: Okay. Read the question back to him
12 that I posed so that he will be sure that I said everyone.

13 (At this time the previous question was read back
14 by the court reporter, as requested.)

15 A That's what you are asking me now to assume?

16 Q No, that's what I asked you to assume before. The
17 word "everyone" was in there, Doctor.

18 A I didn't recall it, sir.

19 Q Sir?

20 A I said I didn't recall that everyone was in there.

21 Q Now, are you assuming, Doctor, that everyone--

22 A In this new assumption, I will, sir, yes.

23 Q Doctor, it's not a new assumption; you heard it in
24 there, did you not, sir?

1 A I heard it this time, sir.

2 Q Now, Doctor, are you assuming that everyone that
3 has levels of 45 HDL and below according to Framingham may
4 be at a greater risk of having coronary heart disease? Are
5 you assuming that, sir?

6 A Yes.

7 Q And that means everyone; doesn't it, sir? Are you
8 assuming that everyone? If there is--are you assuming
9 that, Doctor?

10 A I've already answered that question, sir.

11 Q All right, Doctor. If one person has HDL level of
12 lower than 45--one person is included in the phrase every-
13 one?

14 A According to your assumption, sir, yes.

15 Q According--

16 A According to your assumption.

17 Q Doctor, according to the assumption that the Court
18 has ordered you to take.

19 A According to that assumption.

20 Q Are we still going to quarrel about that, sir?

21 A Well, no, but I think it has to be put in per-
22 spective.

23 Q Doctor, it's been put in perspective. The Court
24 has done it, you know it's in perspective. Now, are you

1 assuming, sir--

2 A I am indeed.

3 Q --that everyone below that is at greater risk,
4 according to Framingham?

5 A We have already established that, yes, sir.

6 Q So, if there's one person, he is at greater risk?

7 A He might be.

8 Q According to Framingham?

9 A According to the assumption, sir.

10 Q According to the assumption, correct.

11 A Not according to Framingham; according to the
12 assumption.

13 Q Isn't that what Framingham said, Doctor?

14 A You are assuming--

15 Q Doctor, isn't that what Framingham said?

16 A No.

17 Q What did Framingham say?

18 A Framingham didn't say that everyone was.

19 Q What did Framingham say, sir?

20 A The Framingham study said that persons--

21 Q Yes.

22 A Persons who have levels of HDL below 45 may be at
23 greater risk.

24 Q Yes.

1 A And it didn't say that everyone was. It said that
2 persons may be at greater risk. So that the assumption is
3 not the same as Framingham's.

4 Q Is persons all-inclusive, Doctor? Is one included
5 in the phrase--is one person included in the phrase
6 persons?

7 A It might be and it might not, sir.

8 Q All right. Now, Doctor, persons is greater than
9 one; is it not, sir?

10 A Persons--it might be two; it might be three; it
11 might be one hundred.

12 Q Doctor, persons is greater than one; is it not?

13 A Yes, but it doesn't mean everybody.

14 Q Assume, Doctor, that persons who have HDL levels
15 of lower than 45 may be at greater risk of having heart
16 disease. Will you assume that, Doctor?

17 A If you are asking me to, I'll assume that.

18 Q Yes, I'm asking you to assume that. Will you
19 assume that, sir?

20 A Yes.

21 Q These people that work at Krummrich are persons;
22 aren't they, sir?

23 A They are.

24 Q So, persons that work at Krummrich who have levels

1 of greater than--less than 45 HDL according to Framingham
2 may be at greater risk; isn't that correct, sir?

3 A Not necessarily.

4 Q Doctor, are they persons?

5 A Yes, but--yes, they are.

6 Q Sir?

7 A Yes.

8 Q Are you assuming that they are persons?

9 A Right.

10 Q And according to Framingham, they are persons;
11 aren't they, sir?

12 A Yes.

13 Q And if they have levels of 45 HDL or lower, they
14 have a greater risk of heart disease, according to Framing-
15 ham; don't they, sir?

16 A No, not necessarily.

17 Q Doctor, isn't that what you just said?

18 A No.

19 Q Are you assuming that, sir? Are you assuming that
20 persons that have lower than that may be at greater risk,
21 sir?

22 A I am.

23 Q Then, these people at Krummrich are persons;
24 aren't they, sir?

1 A They are.

2 Q And if they have those levels, according to
3 Framingham they are at greater risk; aren't they, sir?

4 A No, sir.

5 Q Are they persons?

6 A Yes, but not everybody--

7 Q Excuse me. Are they persons, sir?

8 A They are indeed.

9 Q Do they have levels of lower than 45?

10 A Yes, they are.

11 Q And being persons then that have levels lower than
12 45, they come within the Framingham definition?

13 A No, they do not.

14 Q How do they not?

15 A Because persons are not specific, sir; persons
16 are--persons will include many kinds of people.

17 Q Yes, it includes workers--

18 A So that they may be included or they might not be.

19 Q Doctor, the word persons includes the world;
20 doesn't it, sir; any persons in the world, sir, that have
21 levels of lower than 45 HDL are at greater risk?

22 A It doesn't say that. It said--you said persons.
23 That doesn't mean everybody.

24 Q No, Doctor, you said persons.

1 A I said and you changed it from everybody; did you
2 not, sir? Yes, you did.

3 Q Doctor, are these--

4 A We are now talking about persons.

5 Q Are these people persons or not?

6 A Yes, they are.

7 Q And do they have levels, sir?

8 A They have different levels, yes.

9 Q Lower than 45 HDL; 50 percent of them?

10 A Yes.

11 Q Do these people fall within the Framingham
12 definition?

13 A They may.

14 Q Do they fall within the Framingham definition?

15 A They may.

16 Q No, Doctor, I'm asking you do they?

17 A Yes.

18 Q They do; don't they, Doctor?

19 A They fall within the 45, but they don't fall
20 within the risk definition, sir.

21 Q Doctor, the risk definition is those persons that
22 have lower than 45 may be at greater risk; isn't that the
23 definition, sir?

24 A Yes, I believe it is.

1 Q All right, Doctor. They fall within that defini-
2 tion; don't they, sir? They may be at greater risk, may
3 they not, sir, these people at Krummrich that have these
4 levels lower than 45?

5 A We've already said that in our paper.

6 Q You've said it already? Then, Doctor, why are
7 you disputing it today?

8 THE COURT: At this point in time I'd like to
9 break for lunch. Okay. We'll break for lunch at this
10 time. We'll resume at 1:15. The admonishments that I gave
11 you earlier will apply during this lunch break also. The
12 Court is in recess.

13 (At this time a lunch recess was taken.)

14 (The following proceedings were had in chambers
15 out of the hearing and presence of the jury following the
16 lunch recess.)

17 MR. CRAVEN: Judge, we talked with Mr. Carr just
18 a minute ago, what we want to talk about now is Dr. Sus-
19 kind's continued appearance on the stand and the fact that
20 he's been on the stand for two months really, two calendar
21 months--

22 THE COURT: Just about.

23 MR. CRAVEN: --19 or 20 trial days. This man is
24 73 years old. He is exhausted. He has been living away

1 from home going back getting back late on Friday nights,
2 coming here in time for court the next day. He's--several
3 times his testimony has been interrupted by reason of days
4 off or something, coming here on Monday and no court on
5 Tuesday. I'm not faulting anyone for that; I'm just saying
6 that is a fact.

7 THE COURT: Right.

8 MR. CRAVEN: And we are to a situation where a
9 combination of two things, his health and the fact that
10 he's exhausted and his own schedule. And we need to do
11 something about the rights of this witness. Mr. Carr is
12 indicating--he didn't give us any kind of an indication of
13 how long this is going to continue. And--

14 MR. CARR: You didn't ask me for an indication.

15 MR. NASSIF: He asked you if you were close to
16 finishing.

17 MR. CARR: That's correct. And I told you I was
18 not.

19 MR. CRAVEN: And there's no way we know this.
20 And in any event, we are now asking that this witness be
21 permitted to interrupt his testimony at this stage and come
22 back after some period of time when he can recover. It's
23 very obvious to anyone, I think, watching this trial that
24 this thing is--the tension is just getting too great. Dr.

1 Suskind is under constant pressure day and night. And I
2 can see Rex being quite different and he's showing the
3 tension. And frankly, your Honor, I see the Court reflect-
4 ing tension that goes on in this courtroom. And it's time
5 to take a break in that; not take a break from the trial,
6 but take a break from this witness and come back to him at
7 a later time when these tensions have abated and when he's
8 recovered. And to continue with this witness under these
9 circumstances just simply--just simply can't be endured.
10 And--

11 THE COURT: What's your thoughts on the matter,
12 Mr. Carr?

13 MR. CARR: Your Honor, what the Counsel requests
14 is first of all in my judgment way out of line, because
15 anything that is occurring relating to the length of the
16 examination of this witness is the making of the witness
17 and it's not my making nor the Court's making. The witness
18 is doing it; he's doing it deliberately; he shows absolute-
19 ly no sign of tension. He's smiling and laughing and from
20 all appearances is having a great time. And I certainly
21 suggest to Counsel that he's way in error if he thinks I'm
22 under any more tension than I have been from the beginning
23 of this case. They are certainly not affecting me nor my
24 ability to function, and he hasn't been here very long that

1 he wouldn't say that I show signs of tension. To put the
2 witness in context, your Honor, he started on the 10th of
3 February, and we had the 11th--that was Monday--the 11th
4 was off and the 12th was off because it was Lincoln's
5 birthday. So, he worked three days that week. The follow-
6 ing week we had no trial on the 17th, that was Washington's
7 birthday, and no trial on the 20th and 21st. He worked two
8 days that week. He couldn't be here on the 20th and 21st.
9 The following week we had no trial on the Monday because I
10 had to be in the Fourth District Appellate Court in Spring-
11 field, and we had four days of trial.

12 MR. SEIGFREID: "No trial; Judge was ill."

13 MR. CARR: That's correct. The Judge was sick
14 for--

15 THE COURT: For about four days.

16 MR. CARR: Three days that week plus the fourth
17 day we had Motions. A juror was not in the courtroom; a
18 juror had problems getting there, and so we didn't have it.
19 So, actually that week no problems at all with him being
20 here; he had a long time off. The week of March 3rd, at
21 the request of Dr. Suskind we shut down on Wednesday. We
22 had two days at the beginning of the week and two days at
23 the end of the week.

24 THE COURT: Right.

1 MR. CARR: The week after that we had court on
2 Monday, no court on Tuesday, no court--and court on Wednes-
3 day, no court Thursday or Friday.

4 THE COURT: Right. That was when I was on the
5 faculty of the judicial conference.

6 MR. CARR: We had two days of court that week.
7 The following week, the week of March 17th, we had no court
8 on the 18th and we ended court at 3 p.m. on Friday the
9 21st. So, we had three and three quarter days of trial
10 that week. The following week, the week of March 24th, we
11 had no court on Thursday and Friday. We had three days of
12 court that week. The following week we had no court on
13 Tuesday. We had four days of trial that week. And that's
14 the week we're in right now. This is the longest. We've
15 had four days of trial this week, your Honor. There has
16 been no burden. We have not had since this witness has
17 been here a week of solid trial. We have had many breaks,
18 many recesses, to accommodate this witness and because the
19 Court was sick and because of the conferences and because
20 of holidays. This witness--I could have finished with this
21 witness inside of a week if the witness had responded as a
22 witness is expected to respond and as this Court directed
23 him to respond. He has simply refused to do so. Now,
24 Counsel apparently now is saying that they can't control

1 him; that he's out of control. Well, it appears to me that
2 if he's out of control, that certainly is his problem. And
3 he's a very experienced--he doesn't show the least sign of
4 fatigue nor the least sign of being concerned or upset
5 about his deliberate flaunting of the Court. I could
6 finish this cross examination of him next week without any
7 problems whatsoever--without a question I could finish this
8 cross examination next week if the witness were to respond.
9 We have had to go back again and again and again to re-
10 establish points already established. There isn't a day
11 goes by that I don't have to re-establish points already
12 made. The best example of what's occurred is just here
13 right before noon. I started out trying to establish the
14 problems with the MDLs. We finally end up right before
15 noon, "Well, I said that all the time in my report." as if
16 what do we have this dispute about. He denied it to start
17 with, and then he ends up saying, "Well, I said that all the
18 time; there's no problem with that."

19 THE COURT: Let me interrupt you. All the jurors
20 are here. I want to--we'll finish this after court. I'll
21 announce, so this juror can make her plans, that we'll be
22 off Tuesday April 8; and at the end of court this afternoon
23 we'll resume this discussion so that both of you can say
24 whatever in full you wish to say.

1 (The following proceedings were had in the
2 hearing and presence of the jury after the in-chambers
3 conference.)

4 THE BAILIFF: Everyone please rise. You may be
5 seated.

6 Q (By Mr. Carr) Dr. Suskind, these lipid findings
7 that we've discussed have occurred both in the group that
8 had chloracne at Krummrich and in the group that did not
9 have chloracne at Krummrich; isn't that correct, sir?

10 A I really can't answer that, because I don't know
11 what lipids you are talking about, sir.

12 Q Doctor, you don't know the lipids that we've been
13 talking about?

14 A We've been talking about HDLs, yes.

15 Q The HDLs--

16 A Yes.

17 Q The DLDL, and LDL. All those lipids, sir. Those
18 are all lipids; aren't they, sir?

19 A Yes, they are.

20 Q And, Doctor, the lipids have been effected in both
21 the chloracne and the nonchloracne group; have they not,
22 sir?

23 A In some instances, yes, sir.

24 Q Well, Doctor, for instance, in the HDL instance,

1 17 out of 40 had lipid HDL levels of less than 45; did they
2 not, sir, where they did not have a history of chloracne?
3 Table 23, Dr. Suskind. Do you have your exhibit there?
4 Your report of 1980?

5 A I have 23, sir, yes.

6 Q And doesn't it reflect that of those that had no
7 history of chloracne that 17 out of 40 had levels of less
8 than 45 of HDL levels?

9 A That is correct, sir.

10 Q And in those that have a history of chloracne,
11 it's 36 out of 65--or 67 if that plus one is significant--
12 had levels lower than 45 of HDL; isn't that correct, sir?

13 A That's correct, sir.

14 Q And, Doctor, with regard to the residuals, those
15 that have residuals and no residuals, there's 27 out of 42
16 that have residual chloracne and that have levels of HDL
17 less than 45; isn't that correct?

18 A That's correct, sir.

19 Q But, in those with no residuals, there's 26 out of
20 63 that have less than 45; isn't that correct, sir?

21 A With no residuals, sir?

22 Q Yes.

23 A What's the number?

24 Q Your last column on that page.

1 A Yes.

2 Q Isn't that correct, sir?

3 A Yes, what is the figure you gave, sir; I'm sorry.

4 Q Twenty-six out of sixty-three?

5 A Yes, sir.

6 Q Yes. And, Doctor, now, there's no question but
7 what these lipids, these findings are laboratory effects;
8 isn't that correct, sir? Or to put it differently, the
9 lipid findings can be a laboratory effect of exposure to
10 toxic substances?

11 A Lipid--abnormal lipid findings, if they are
12 abnormal, if they are abnormal, may be in some instances
13 the result of an exposure to a toxic chemical.

14 Q And it certainly can be the result of exposure to
15 TCDD; can it not, sir?

16 A No, sir.

17 Q Doctor, isn't that what you have stated in your
18 Table 1692B as either a subacute or subchronic finding from
19 exposure to TCDD?

20 A Yes, but HDL is not listed there, sir.

21 Q Doctor, isn't it a lipid?

22 A Yes, it's a lipid, but all lipids are not the
23 same, sir.

24 Q All right, Doctor. The elevated triglycerides and

1 the elevated total lipids according to your document can be
2 a result of exposure to TCDD; is it not, sir?

3 A In the subacute exposure, yes, sir.

4 Q And, Doctor, we--or subchronic?

5 A Or subchronic, right.

6 Q And, Doctor, we also know that both Moses and
7 Zack-Gaffey remarked upon the correlation of mortality from
8 heart disease with working at the Nitro plant or being in
9 that particular valley; isn't that correct, sir? We've
10 established that this morning.

11 A No, sir, we did not.

12 Q We didn't establish, sir--would you look at the
13 Zack-Gaffey report?

14 A Zack-Gaffey, yes, but not Moses-Selikoff. They
15 were simply quoting Zack-Gaffey.

16 Q That's what I said. Moses-Selikoff commented on
17 that; did they not?

18 A No, you said Moses-Selikoff and Zack-Gaffey, and
19 that's not so. It's just Zack-Gaffey.

20 Q All right, Doctor, I'll certainly accept that.
21 Moses-Selikoff commented on what Zack-Gaffey reported;
22 isn't that correct, sir?

23 A That's correct, sir, yes.

24 Q And what they reported is that there was an

1 increased mortality rate from heart disease in the Nitro
2 workers, did they not, sir, than the general population?

3 A I believe that's what the Zack-Gaffey report
4 alleged.

5 Q And, Doctor, there is no question but what the
6 lipid levels, not just low levels of HDL but elevated
7 levels of triglycerides or the other lipids is associated
8 with and can be a factor in causing heart disease? There's
9 no question about that medically; is there, sir?

10 A Well, there is some question about types of lipids
11 that may be related to heart disease. Not all lipids are
12 related to heart disease, sir.

13 Q Doctor, is cholesterol related to heart disease?

14 A It can be.

15 Q Triglycerides related to heart disease?

16 A It might be in some instances.

17 Q Total lipids related to heart disease?

18 A Not necessarily, no, sir.

19 Q May it be, Doctor?

20 A No, sir.

21 Q It may not be?

22 A No.

23 Q Are you saying that there is no association found
24 by anybody with total lipids, sir, and heart disease?

1 A Alone, no, sir. Alone, no, sir.

2 Q I didn't say alone; did I?

3 A No, but you said, "Is it?"

4 Q Doctor, there's nothing happens in the body alone.
5 There's life style--

6 A It can.

7 Q --that's involved; there's exercise that's
8 involved; there's whether or not you're genetically more
9 susceptible to this kind of problem; whether or not you've
10 suffered trauma; you can get a heart attack from trauma and
11 not have a--Doctor, there's all kinds of things to inter-
12 act, and you surely didn't take me to mean that total
13 lipids alone can cause a death from a heart attack?

14 A It wouldn't cause it--

15 Q Did you sir? You didn't understand me to say
16 that; did you?

17 A I certainly did.

18 Q All right, Doctor.

19 A Because you said total lipids, and that's what I
20 thought you said, sir. Total lipids.

21 Q Doctor, let me preface--Doctor, may be associated
22 with heart disease is what I said.

23 A Not alone, sir.

24 Q And, Doctor, I agree; it's not alone. There are

1 other factors involved; aren't there, sir?

2 A But if it's just total lipids, it's not so.

3 Q Doctor, there are other factors involved; aren't
4 there, sir?

5 A There may be.

6 Q Thank you. Now, Doctor, in addition to the lipid
7 findings that we've discussed this morning and the signifi-
8 cance of the lipid findings, there were a number of
9 laboratory reports on these workers at Krummrich where they
10 had levels outside the reference range used by METPATH;
11 isn't that correct, sir?

12 A I'm not sure I understand the question, sir.

13 Q Doctor, in the study you did of the Krummrich
14 people, you had more things analyzed by the laboratory than
15 just the lipids; did you not, sir?

16 A Oh, yes, sure.

17 Q And there were a number of reports made by METPATH
18 on these workers; weren't there, sir? Doctor, they have
19 been introduced into evidence.

20 A A number of reports with respect to what, sir?

21 Q These workers, Doctor. Laboratory--

22 A Different laboratory parameters?

23 Q Different laboratory tests, Doctor, by METPATH,
24 blood--

1 A Well, sure, yes, absolutely; no question.

2 Q Doctor, you are also aware of the fact that there
3 were a large number of Krummrich plant workers that
4 according to METIPATH's report had results from those
5 various laboratory tests outside the established reference
6 range? You are aware of that fact; aren't you?

7 A No, sir, not large numbers, sir.

8 Q Now, Doctor, I would like for you to assume, sir,
9 that it has been testified to in this Court in the column
10 "Other" that those are--each check mark represents a
11 METIPATH report on a Krummrich plant worker, sir, where the
12 result was outside the reference range established by
13 METIPATH. Will you assume that, please, sir?

14 A Are you referring to this, sir?

15 Q Yes.

16 A Are you referring to this?

17 Q I am, Doctor.

18 A Well, because of it's inaccuracy, sir, I cannot
19 assume that.

20 MR. CARR: Judge, the witness again is doing the
21 same thing he was doing this morning. May he be directed--

22 THE COURT: Doctor, your answer was not respon-
23 sive to the question that was asked of you; so, I am
24 admonishing you to stay within the question that is asked

1 of you, sir.

2 THE WITNESS: Yes, sir.

3 THE COURT: I'm ordering the jury to disregard
4 the remark that the witness just made; it is improper. You
5 may proceed.

6 A As a physician, sir--

7 MR. CARR: Your Honor, the witness is--

8 THE COURT: Doctor, I don't think that--let's try
9 the question over again. And listen to the parameters of
10 the question that's asked of you. Mr. Carr.

11 Q Doctor, I want you to assume, Doctor, that the
12 METPATH laboratory reports on these Krummrich workers who
13 are identified in 1507A have been introduced into evidence,
14 that those laboratory reports show, sir, that for each of
15 these workers they have an abnormal--or that is, I won't
16 use the word abnormal--

17 A Better not.

18 Q --for your benefit, sir, but they have a report of
19 the test that is outside the established reference range of
20 that laboratory.

21 A Thank you.

22 Q That each of these check marks represent such a
23 report by METPATH. Will you do that, sir?

24 A I will assume that this is accurate, sir.

1 Q Yes. Will you please do that?

2 A That the check marks are accurate.

3 Q Yes. Will you do that, sir?

4 A I will assume that, sir.

5 Q All right. And, Doctor, if that is true, there
6 are a number of laboratory effects shown for this popu-
7 lation; is there not, sir?

8 A No, sir.

9 Q Now, Doctor, are you assuming that these are the
10 laboratory results that are outside the reference range?

11 A I am, sir.

12 Q And are you assuming, sir, that a laboratory
13 effect is something that you've established that can be a
14 marker of an absorption of toxic substances?

15 A I am.

16 Q Are you assuming that, sir?

17 A I am if you ask me to.

18 Q Well, Doctor, I am asking--

19 A Yes, yes.

20 Q --you to do as you have so testified.

21 A Yes.

22 Q Will you do that, sir?

23 A Yes.

24 Q And, Doctor, these results are outside the normal

1 reference range; aren't they sir?

2 A If this is accurate, they are, sir.

3 Q And that is a laboratory effect; is it not, sir?

4 A No, sir.

5 Q Doctor, are you assuming that these are test
6 results?

7 A Yes, I am.

8 Q In the laboratory?

9 A Yes.

10 Q And will you assume--are you assuming they are
11 outside the normal range?

12 A Well, I assume they are, yes.

13 Q All right. Doctor, are you assuming that these
14 are then laboratory effects?

15 A That's a different assumption, sir.

16 Q Doctor, can toxic--

17 A These are laboratory--these are laboratory
18 findings.

19 Q Yes, Doctor, we've gone through that.

20 A And it really depends upon whether they are low or
21 high or how far outside the range, sir.

22 Q Doctor--

23 A So, they are not abnormal, sir.

24 Q Doctor, when you referred to on your chart of an

1 elevated SGOT, you are referring, are you not, to the
2 laboratory test for the SGOT?

3 A Abnormal range, sir, not just outside of--outside
4 of the reference range. One has to distinguish between
5 what the significance of outside--

6 Q Doctor, would you please believe me, we have had a
7 number of people in this case testify--

8 A I don't care if you have, sir. It doesn't matter
9 to me.

10 THE COURT: Doctor--

11 A I am a physician and I can interpret.

12 THE COURT: Doctor. Doctor.

13 THE WITNESS: Yes, sir.

14 THE COURT: Now, I wanted to try to get your
15 attention. When I'm interrupting you, I'm doing it for a
16 particular reason.

17 THE WITNESS: I'm sorry, sir.

18 THE COURT: That comment was improper. You
19 answer the questions that are asked of you. I determine by
20 listening to the questions, by objections, and my own
21 Motion whether a question is proper or not. And if I deem
22 it's proper, you have to answer it.

23 THE WITNESS: Sure.

24 THE COURT: Even if you are not personally

1 concerned with the subject of the question. Do you under-
2 stand that?

3 THE WITNESS: I do, sir.

4 THE COURT: Okay. So, that's my decision.
5 Please follow my rulings on that.

6 THE WITNESS: Yes, sir.

7 Q Doctor, can a toxic substance cause laboratory
8 results that are outside the established reference range of
9 the laboratory?

10 A It might.

11 Q Yes. And, Doctor, that would be a laboratory
12 effect of a toxic substance; would it not, sir? It would
13 be an effect that can be seen by the fact that it is out-
14 side the laboratory reference range?

15 A It might, sir.

16 Q Yes, Doctor. Now, if these findings here, sir,
17 represent results outside the laboratory reference range,
18 they too, may they not, be a laboratory effect from a toxic
19 substance; may they not, sir?

20 A No, sir.

21 Q Doctor, are you assuming--

22 A I am, sir.

23 Q You haven't allowed me to tell you what I'm asking
24 yet, Doctor.

1 A I'm sorry.

2 Q What do you think I'm asking you? What do you
3 believe I'm asking?

4 A Well, I believe you will be repeating your
5 previous assumptions.

6 Q And what is that, Doctor?

7 A That laboratory findings outside the reference
8 range can be due to a toxic substance.

9 Q Are you assuming that?

10 A And I said yes I assume that that can happen.

11 Q All right. Now, Doctor, if that can happen--and
12 are you assuming now that these check marks represents such
13 laboratory results? That is, that are outside the normal
14 range?

15 A Yes.

16 Q Are you assuming that?

17 A I am, sir.

18 Q If that is true, then, Doctor, isn't it true that
19 these laboratory findings may be the result of exposure to
20 toxic substance?

21 A No, sir.

22 Q Doctor, are you assuming that--

23 A I am, sir.

24 Q --toxic substance can cause something outside the

1 normal reference range?

2 A I am, sir.

3 Q So, any given laboratory finding outside a normal
4 reference range can be the result of toxic substance; can
5 it not?

6 A No, sir, not any.

7 Q Now, Doctor--

8 A Not any.

9 Q Doctor, are you assuming, as you have said you
10 will assume, that laboratory results outside the normal
11 reference range can be caused by toxic substances?

12 A I am, sir.

13 Q And, Doctor, is there any holdback in your assump-
14 tion on that? In you assuming that--

15 A No, no holdback.

16 Q --that any laboratory result can be caused to be
17 outside the normal reference range by exposure to toxic
18 substances?

19 A If you are referring to any or all--is any
20 equivalent to all--

21 Q Of course not.

22 A --in this instance?

23 Q Of course not, Doctor.

24 A No, sir.

1 Q Doctor, what laboratory result outside the
2 reference range will not--cannot possibly be the result of
3 toxic exposure?

4 A Do you want some examples?

5 Q Yes, I want you to name some laboratory results,
6 sir--

7 A All right.

8 Q --that cannot be the result of toxic exposure.

9 A If, let us say one looks at the blood urea
10 nitrogen, the BUN. And the outside--if you are looking at
11 the range given by METPATH, it's from 6 to 25. And if I
12 have a BUN of 5 or 26, I wouldn't consider that at all as
13 being possibly related to a toxic substance. And that's
14 outside the reference range, sir.

15 Q Well, Doctor, I didn't ask you that.

16 A Well, you--

17 Q My question is: May it be caused by, Doctor, a
18 toxic substance exposure? Is it possible that exposure to
19 a toxic substance can cause such a result?

20 A You said any, sir, and that's why I answered the
21 way I did, sir.

22 Q Doctor, would you answer my question, please?

23 A My answer is no.

24 Q In BUN?

1 A Not in this instance.

2 Q Doctor, I'm not talking about that instance; am I,
3 sir?

4 A I thought you were, sir.

5 Q I'm asking you a general question, Doctor, as you
6 know I'm asking you. Cannot the BUN example that you gave
7 us be the result of a toxic exposure?

8 A No, sir.

9 Q It cannot be a toxic--

10 A No.

11 Q A toxic substance cannot affect--

12 A No.

13 Q Does toxic substances affect BUN?

14 A Oh, if it's high, yes, like 100 or 200; then one
15 would consider toxic substance.

16 Q Hold it, Doctor, I'm not asking whether or not one
17 would consider it; I'm asking you, Doctor, if a normal BUN
18 can be caused to go to 100 by a toxic substance. And it
19 can; can it not?

20 A Yes, it can.

21 Q Then, a toxic substance of lesser potency or
22 lesser amount can cause it to go to 99; can it not, sir?

23 A No, sir.

24 Q Can't make it go to 99?

1 A It could go to 99 even with the same level of
2 toxic substance.

3 Q And could it cause it to go to 98 with the same
4 level or less?

5 A Yes, it could.

6 Q Could it cause it to go to 90 with the same level
7 or less?

8 A It might.

9 Q Could it cause it to go to 75 with the same level
10 or lesser?

11 A I don't know.

12 Q Could it, Doctor?

13 A It might.

14 Q Could it cause it to go to 60 with the same--with
15 lesser, sir?

16 A I really don't know.

17 Q Well, might it, Doctor? Could it be? If you
18 don't know, I suppose it could?

19 A I don't think so. It's my professional opinion
20 that it is not so.

21 Q Now, Doctor, what you are saying then is a toxic
22 substance can cause the BUN--the potency of a toxic
23 substance can cause the BUN to go above 60 but a less
24 potent toxic substance cannot cause it to go below 60. Is

1 that what you are saying?

2 A No, I am not.

3 Q Doctor, that's what I'm asking you, sir. Can a
4 less potent toxic substance, instead of causing it to go to
5 60, a less amount of it cause it to go to 59, sir? Can it
6 do that, sir?

7 A I don't know.

8 Q Doctor, if you don't know--

9 A It's impossible to--

10 Q Doctor, if you don't know--

11 A It's not possible to answer your question, sir.

12 Q Excuse me, sir. Could you please answer the
13 question? If you don't know, sir, then it is possible that
14 a lesser amount of a toxic substance or a less potent toxic
15 substance can cause the BUN to go to 59?

16 A In my professional opinion, no, sir.

17 Q You don't think that's possible?

18 A No, in my professional opinion.

19 Q If it's possible that it would do it at 60, why
20 isn't it possible that it would do it at 59?

21 A Well, you know, you can go all the way down the
22 scale and--

23 Q Doctor, my question is: If it's possible that a
24 toxic substance can cause the BUN to be at 60, why isn't it

1 also possible that a little bit less of that toxic
2 substance can cause it to be at 59?

3 A Because one can have a cutoff. One can have a
4 cutoff.

5 Q Doctor--

6 A Excuse me, sir.

7 Q Doctor, are you saying that it is possible the
8 toxic substance can cause it to be 60, but that it is
9 impossible that it can cause it to be 59?

10 A No, I didn't say that. In my professional
11 opinion--

12 Q Excuse me, Doctor. That's what I'm asking you,
13 sir, so that we understand correctly. Are you saying that
14 it is possible that it would do it at 60, but impossible
15 that it would do it at 59?

16 A I didn't say that. I said in my professional
17 opinion--

18 Q Doctor, I'm asking you, sir.

19 A It might.

20 Q Yes, it might, Doctor. And, Doctor, would it do
21 it at 50? Could a toxic substance do it at the level of
22 50, sir?

23 A I don't know, sir.

24 Q Give me your opinion, Doctor.

1 A In my professional opinion, I don't think so.

2 Q Is it possible that it could, sir?

3 A We are talking about kidneys, sir.

4 Q Is it possible that it could, sir?

5 A I cannot answer that in the abstract, sir; it's an
6 abstract question.

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

9 THE COURT: Doctor, answer the question.

10 A I cannot say, sir. I don't know.

11 Q I'm not asking if you know, Doctor; I'm asking is
12 it possible that it could do so?

13 A It's remotely possible.

14 Q All right, Doctor. Can it do it at 30? Can a
15 toxic substance cause the BUN to go to 30?

16 A I would say in my professional opinion, no.

17 Q No; is it possible, sir?

18 A No.

19 Q Is it possible that it can make it go to 40? Is
20 that right, sir?

21 A It might.

22 Q Is it possible that it can make it go to 39, sir?

23 A I have no idea, sir.

24 Q Doctor, if you have no idea, then it's possible;

1 isn't it, sir?

2 A No, I can't tell you, sir.

3 Q Doctor, if you have no idea, then it is possible;
4 isn't it, sir?

5 MR. HEINEMAN: Objection, your Honor. It's
6 calling for speculation on the part of this witness.

7 THE COURT: Objection is overruled.

8 A Ridiculous.

9 MR. CARR: Your Honor, the witness made a
10 comment; I don't know if the Court heard it or not.

11 THE COURT: I did not. Would you repeat the
12 comment for the Court? I would like to hear the comment.
13 What did you say?

14 THE WITNESS: I said the--it is a ridiculous set
15 of questions.

16 MR. CARR: He said ridiculous, your Honor, is
17 what he said, period.

18 THE WITNESS: Ridiculous, yes. And I was
19 referring, sir--

20 THE COURT: Doctor; Doctor, I don't care what you
21 were referring to; that was an improper comment.

22 THE WITNESS: I apologize.

23 THE COURT: I told you when you made improper
24 comments like that before they were improper; you've

1 apologized before when you've made them; and you've
2 continued to make them. Now, for a change, please follow
3 the Court's directions. You may proceed, Counsel.

4 Q Dr. Suskind, I'd like you to assume that others
5 have testified in this case that results outside the normal
6 reference range can be the result of exposure to toxic sub-
7 stances. Will you do that, sir?

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

10 THE COURT: Sure.

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

13 MR. HEINEMAN: I object to the use of the term
14 "others". What others? I think they should be identified
15 to the witness. I object to the use of the term "others".
16 There haven't been that many that Mr. Carr has put on the
17 stand that have said such a thing.

18 MR. CARR: I don't think I need to identify every
19 instance of the witnesses. A multiple number of witnesses
20 have been here testifying about effects of dioxin.

21 MR. HEINEMAN: Multiple number? I can think of
22 two that have talked about outside the reference range,
23 Zahalsky and Carnow.

24 MR. CARR: I can think of Silverdale, and I can

1 think of Lattimer. I can think of Blonsky. Well, I can
2 think of those.

3 THE COURT: Others is two or more, and he
4 supplied two and you supplied a few more. I don't think
5 there's any problem with the word "others". Objection is
6 overruled.

7 (The following proceedings were had in the
8 hearing and presence of the jury.)

9 Q Will you assume that, Doctor?

10 A What do you want me to assume, Mr. Carr?

11 MR. CARR: Would you read the assumption to the
12 witness, please?

13 (At this time the previous question was read back
14 by the court reporter, as requested.)

15 A Perfectly possible that they did, and I will
16 assume that they did.

17 Q It is possible that they did; isn't it, Doctor?

18 A I said it's possible for them to have said this,
19 so I will gladly assume it, sir.

20 Q And it's possible that they said that because
21 that's a scientific fact; isn't it, Doctor?

22 A It could be in their opinion, sir.

23 Q Yes.

24 A In their opinion.

1 Q But, you don't share the opinion?

2 A As an expert in this court--

3 THE COURT: Doctor, Doctor, please. You were
4 interpreting a question. Let Counsel finish the question.

5 Q Doctor, is it that you don't share the opinion
6 that toxic substance can cause a laboratory result to be
7 outside the normal reference range?

8 A Not all laboratory results, sir, no, I do not
9 share that opinion.

10 Q Doctor, I asked you before to identify those that
11 would not be so effected, and you went to BUN, and we went
12 down to a level where you did not know.

13 A You didn't ask me that question, sir.

14 Q Doctor, is there other--

15 A You didn't ask me that question, sir. I raised
16 the BUN myself.

17 Q Doctor, I asked you to identify--I said, "Is it
18 true that any laboratory test result can be caused to be
19 outside the normal reference range by exposure to toxic
20 substance?" Do you recall that, sir?

21 A I do.

22 Q And do you agree that that's a fact, sir?

23 A For some substances, for some--

24 Q Doctor, that's all right; I don't care about that.

1 I said by toxic substances.

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

4 THE COURT: Objection is overruled.

5 Q Doctor, do you agree that some toxic substances
6 can cause laboratory results to be outside the normal
7 reference range?

8 A For some laboratory tests and at some levels.

9 Q Doctor, what--are you saying now that just five
10 above the normal reference range of toxic substance can't
11 cause that? Five units above?

12 A I'm saying that five units above a BUN may not be
13 abnormal. That's what I'm saying. And it's listed here,
14 sir.

15 Q Doctor, I'm not talking about abnormalities now.
16 Do you understand that, Doctor? I'm talking about whether
17 or not a toxic substance can cause a test result to be out-
18 side the normal reference range. Do you understand that,
19 Doctor?

20 A Some toxic substan--

21 MR. HEINEMAN: Excuse me, Doctor. May Counsel
22 approach the bench?

23 THE COURT: Yes.

24 (The following proceedings were had out of the

1 hearing and in the presence of the jury.)

2 MR. HEINEMAN: Now we're going with the word
3 games again. He says, "I'm not talking about abnormal" and
4 then he refers to normal reference range. A reference
5 range isn't normal or abnormal. It's a reference range.
6 And I object to his saying, "I'm not talking about
7 abnormal" and then throwing the word "normal" into the
8 question. It's misleading to the witness and to the jury.

9 MR. CARR: It's not misleading, your Honor. He
10 agreed with me this morning; he's had the lunch hour to
11 know whether or not he said it. He said it himself. He
12 agreed with it, even after Counsel was up here making the
13 objection. He has said it time and time again; it's not at
14 all misleading.

15 THE COURT: I don't think it's misleading either.
16 I've heard it used in the context before I've heard this
17 question, too. I don't think it's misleading at all. I
18 think the questions are clear and the context is clear.
19 Objection is overruled.

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

22 MR. CARR: Would you read back the question,
23 please.

24 (At this time the previous question was read back

1 by the court reporter, as requested.)

2 A Yes, some test results, yes, sir.

3 Q Doctor, and what test results cannot be caused to
4 be outside the normal reference range by a toxic substance,
5 Doctor?

6 A Test results which are just--

7 Q Would you identify those for me, please?

8 A No--may I finish, sir? Test results which are
9 just outside the reference range, low or high. And in many
10 instances if the reference range--if the lower end of the
11 reference range has no significance whatsoever, like in a
12 BUN, then if it would be ten units below the reference
13 range, a toxic substance wouldn't cause that. That's what
14 I'm talking about.

15 Q Now, Doctor, are you saying that a toxic substance
16 exposure will cause only results above the normal reference
17 range?

18 A No. No, it will cause in some instances lowering.
19 It might cause lowering. But, it really depends upon the
20 parameter or the laboratory test that you're talking about.
21 And you can't lump them altogether the way you have, sir.
22 You can't lump them altogether. The laboratory test is not
23 a laboratory test is not a laboratory test. You have to
24 distinguish between the laboratory tests. You're talking

1 about chloride; you're talking about BUN; you're talking
2 about chloreaone; you're talking about lipids; you're
3 talking about blood counts. What are you talking about?
4 And that's why I am saying that you have to distinguish on
5 the basis of what tests and is it elevated or--

6 Q Now, Doctor, what I am asking--

7 A --or reduced.

8 Q --you to do is identify the laboratory tests that
9 will not reflect exposure absorption to a toxic substance.

10 A I think I have to qualify this by saying that it
11 all depends upon what type of out of reference range you
12 are talking about--way out of the reference range or on
13 the low side or on the high side. For example, I don't
14 know of any toxic substances that causes perhaps a low
15 blood sugar.

16 Q Well, then, that's one, Doctor.

17 A Okay.

18 Q Would you identify some others, please?

19 A Well, I haven't gone through these hundreds of
20 things to answer your question. It would take hours to do
21 it, sir. But, I think in principle--

22 Q Let me pose it a different way, then, Doctor.

23 A Please do, sir.

24 Q You require these laboratory tests to be conducted

1 because they are important to you in determining whether or
2 not the toxic substance in question has affected the person
3 in question; do you not, sir?

4 A In what--in what relationship?

5 Q In these studies of workers who have been exposed
6 to toxic substances. You set out and determine which
7 laboratory tests you want; do you not, sir?

8 A Yes, sir.

9 Q And, Doctor, in this case, the laboratory tests
10 that were performed were the ones that you ordered to
11 assist you in arriving at a judgment as to whether or not
12 these workers had their health status effected by working
13 with these chlorinated phenols; did you not, sir?

14 A Not altogether, sir.

15 Q Now, Doctor, didn't you say on page 2 that you
16 wanted these--"Clinical laboratory tests included: blood,
17 CA, P, BUN, Creatinine, BUN-creatinine ratio, uric acid,
18 glucose (fasting blood sugar), total protein, albumin,
19 globulin, total bilirubin, direct bilirubin, transaminase
20 SGOT and SGPT--

21 MR. CARR: I'm sorry, I know these are unfamiliar
22 terms. I'm reading from page 2 of Exhibit 1500 if you have
23 any problems.

24 Q --alkaline phosphatase, LDH, cholesterol, iron,

1 magnesium, sodium, potassium, chloride, G-glutamyl-trans-
2 peptidase, triglycerides--triglycerides and lipoprotein
3 profiles, CBC and differential, urinalysis and urinary
4 coproporphyrin, uroporphyrins, and creatinine."

5 MR. HEINEMAN: Objection, your Honor. Counsel
6 approach the bench?

7 THE COURT: Sure.

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

10 MR. HEINEMAN: The words "you wanted" do not
11 appear in that paragraph. I object to the question.

12 THE COURT: Let me read the paragraph.

13 MR. HEINEMAN: I object to the question. It
14 says, "Didn't it say here you wanted these". It doesn't
15 say that at all. It says, "Clinical tests included."

16 THE COURT: Yes, I have read that.

17 MR. HEINEMAN: And what the doctor has said is
18 that not altogether. In other words, as Dr. Carnow has
19 said, you order a battery of tests and sometimes you get
20 some you didn't order and sometimes you don't. He's saying
21 not altogether. There's some he asked for and there's some
22 he got that perhaps he didn't ask for.

23 MR. CARR: I've read the ones he asked for.

24 MR. HEINEMAN: No, you read the ones listed here.

1 where it says, "These are the laboratory tests."

2 THE COURT: Your objection is overruled. Dr.
3 Suskind is the principle investigator. He was in charge of
4 it. The context of the question is, "In his report" which
5 notes that it was submitted by him and it is his report,
6 and he has gone on record saying that it is his report
7 whether final or not. The context of that is "This is
8 what was ordered and the tests that you were responsible
9 for". I don't think that is an unfair or unreasonable
10 question in the context of his report. Your objection is
11 overruled.

12 MR. HEINEMAN: All right, your Honor, maybe you
13 misunderstood my objection. My objection is that the
14 question says, "Didn't this say you wanted" the following
15 tests. It doesn't say that. And so, it's a clear mis-
16 representation of what it is he's reading to him. That's
17 what my objection is.

18 MR. CARR: Well, I'm not attempting to read this
19 verbatim. I simply referred to the page for the court
20 reporter's need. I'm asking him, "Didn't you want these
21 tests?"

22 MR. HEINEMAN: Well, that's so specious and dis-
23 ingenuous. You referred to this page for the court
24 reporter's need?

1 MR. CARR: Right.

2 MR. HEINEMAN: Why, that's preposterous.

3 MR. CARR: I only referred to it, Counsel, when I
4 saw that she wasn't getting it. And I told her the page
5 that I was reading from.

6 MR. HEINEMAN: You told the witness to look at
7 page 2.

8 MR. CARR: I did not.

9 THE COURT: Whether he did or not is immaterial.
10 The context of this being his report, he can be asked as
11 far as his responsibility for ordering these tests. I
12 think that's a proper question; it was a proper question
13 with Dr. Carnow; it's a proper question with Dr. Suskind;
14 it's a proper question with any other of these medical
15 witnesses who orders tests, period. Objection is over-
16 ruled.

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

19 Q Doctor, aren't these tests that I've read to you
20 tests that you wanted to be done, sir?

21 A Not all of them, sir, no. One orders a battery of
22 tests from a laboratory and they have--some of the tests
23 are really not very essential, some are more essential than
24 others, from my standpoint.

1 Q Which of these tests are ones that you did not
2 order, sir?

3 A We ordered a battery, and it comes in a package,
4 sir. We didn't--

5 Q Excuse me, sir. Which of these tests in this
6 package is it that you did not want, sir?

7 A We didn't--it isn't that we didn't want it; it's
8 the fact that these--some of these tests weren't essential
9 to our objective.

10 Q All right. Doctor, now, which of these tests--

11 A Okay.

12 Q --were not important to you that you didn't need
13 to have done?

14 A If you look at the first page of the final set of
15 data that you have here--

16 Q Doctor, my question to you is: Which of these
17 tests, sir--how about the blood? Didn't you want that,
18 sir?

19 A It is what we wanted in the blood, sir.

20 Q Excuse me, did you want a laboratory test that
21 would include the blood--blood test--blood Ca?

22 A What kind of blood test? Blood chemistry, blood
23 cells?

24 Q Doctor--

1 A Mr. Carr--

2 Q Excuse me, Doctor. Did you or did you not want
3 this test that I read off to you--blood Ca?

4 A Blood calcium? Is that what you're talking about?

5 Q No, Doctor, I'm talking about what you put in your
6 report that the laboratory tests included.

7 A Well, we didn't specifically--

8 Q On page 2 of your report, sir, of Exhibit 1500.

9 A The calcium and phosphorous were not important,
10 but they were in the battery.

11 Q Excuse me, Doctor. My question is: Which one did
12 you not order?

13 A It isn't that we didn't order it; we ordered a
14 battery of tests. You don't do a--Mr. Carr, you have to be
15 reasonable. We ordered a set of tests which are made
16 available by a laboratory.

17 Q Yes.

18 A And they have a battery. Now, what you're asking
19 is which of them are not significant to our study.

20 Q No, Doctor, what I'm asking you--

21 A We didn't say, "We don't want that test."

22 MR. CARR: Your Honor--

23 A We didn't say that.

24 Q What I am asking you is which of these tests that

1 you ordered here that you did not want or need, sir? Which
2 of these tests that I've read to you, sir, did you not want
3 or need?

4 A There were--certain tests were not essential, and
5 that's how I'll put it; not in your terminology, sir.

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

8 THE COURT: Doctor, Doctor, we've gone through
9 this before. You have to answer according to that termi-
10 nology. You don't determine what questions either plain-
11 tiff's Counsel or defendant's Counsel asks you. Now--

12 THE WITNESS: Yes, sir.

13 THE COURT: Now, you have the question before
14 you; it's been repeated a number of times; answer the
15 question, Doctor.

16 A Of the blood chemistries, sir?

17 Q No, Doctor, I'm talking about the--

18 A Of the blood chemistries, let me list those
19 things--

20 Q No, Doctor.

21 A --that we didn't really need.

22 Q No, Doctor.

23 A You're asking me--

24 MR. CARR: Your Honor.

1 Q I'm asking you, Doctor, with reference to the
2 tests that you stated, the laboratory tests included on
3 page 2, which of those tests on that page did you not want
4 or need?

5 MR. HEINEMAN: Objection, your Honor. I believe
6 that's just what the witness was saying.

7 THE COURT: Objection is overruled.

8 A I would put it as need. We did not need, for
9 example, phosphorous.

10 Q That represents the "P"?

11 A The "P", sir.

12 Q And--but, you ordered it?

13 A We did not.

14 Q Excuse me, Doctor.

15 A Let me go ahead, sir, and answer the rest of your
16 question.

17 Q Doctor, let me finish. But, you ordered it; did
18 you not, sir?

19 A What?

20 Q You ordered it; didn't you, sir?

21 A No. We ordered a battery, sir. It comes in a
22 package. And if you--and I believe you do know what hos-
23 pitals do and laboratories do, and I submit--

24 Q Go ahead, Doctor.

1 A --that you are attempting to confuse me.

2 Q Go ahead, Doctor, and give me--

3 A Or confuse the Court, sir.

4 Q Go ahead, Doctor, and give me the rest of the
5 tests that you did not want?

6 A Thank you, sir, very much. Iron, magnesium,
7 sodium--

8 Q Slow down. Slow down one minute, Doctor. Iron
9 and magnesium and sodium.

10 A Sodium. Potassium, chloride--those that are
11 listed there. Iron.

12 Q Now, you said iron once already.

13 A Okay.

14 Q So, it was the iron, the magnesium, the sodium,
15 the potassium, and the chloride that you did not want or
16 need; is that correct?

17 A That we didn't need them, sir. You said the want.
18 We didn't need them.

19 Q All right. That you did not need; is that right,
20 sir?

21 A That's correct.

22 Q And, Doctor, why would you--excuse me. When you
23 announce, you are telling the people here that these
24 laboratory tests included these things; are you not, sir?

1 A Right, we are.

2 Q And you're telling them that without telling them
3 that it wasn't needed for your diagnosis for your report;
4 is that correct, sir?

5 A I don't know what you are talking about, sir.

6 Q Doctor, you are telling the reader of this docu-
7 ment, your client, in this instance Monsanto, the one that
8 ordered the test from you, this report from you, you are
9 telling them simply that the tests included these things;
10 aren't you, sir? You are not telling them what you needed
11 or whether it was essential or unessential; are you, sir?

12 A We didn't state that in this document, sir; you
13 are quite right.

14 Q Doctor, would you tell them in advance--you would
15 advise them what you are going to give them for their
16 money; wouldn't you sir? Wouldn't you have told them that
17 in advance that you are going to--what tests you are going
18 to need and get?

19 A I believe we said we were going to get a battery
20 of tests which included that. We didn't have to tell them
21 we didn't need it, sir. We were getting tests done
22 including all those we wanted.

23 Q Doctor, didn't you tell Monsanto and the workers
24 and everybody else in Exhibit 1504 that the clinical labor-

1 atory work will include every single one of those tests
2 that you read off that you say are not essential? Didn't
3 you tell them that? On the front page of 1504, Doctor,
4 the preliminary document that you sent out, Doctor, before
5 you ever had the study performed, Doctor?

6 A Right.

7 Q Before you ever ordered the tests, Doctor?

8 A Yes.

9 Q Did you not tell them, sir, that the clinical
10 laboratory work--

11 A Will include--

12 Q That you told them what you were going to do; and
13 did you not tell them, sir, the clinical laboratory work is
14 going to include all these things, sir?

15 A Right, we did, sir.

16 Q Yes, you did; didn't you, Doctor?

17 A Sure we did.

18 Q Now, Doctor, these laboratory effects--and these
19 are laboratory effects; are they not, sir?

20 A No, they are laboratory findings which may have no
21 significance or significance.

22 Q Doctor, I won't quarrel with that at all that they
23 may have no significance at all as far as you are con-
24 cerned. They are laboratory effects; aren't they?

1 A They are laboratory findings, sir. Effects
2 means--

3 Q Excuse me, Doctor.

4 A --something is behind it.

5 Q Haven't you agreed that laboratory findings and
6 laboratory effects are equivalent? Do I need to establish
7 that again, Doctor? Didn't you testify to that?

8 A When they are abnormal, they are listed that way,
9 sir, yes, we did.

10 Q We did establish that; didn't we?

11 A We did in that case, but not here, sir.

12 Q Doctor, we established in this courtroom that when
13 you said laboratory finding, you mean the same thing as
14 laboratory effect; did you not, sir?

15 A No, sir. We're talking--

16 Q We didn't establish that, Doctor?

17 A If we know what we are looking for, sir. If we
18 know that there may be an association.

19 Q Doctor, didn't we establish that in this court-
20 room?

21 A I submit we did it for that--that exhibit, sir,
22 yes, we did, for that exhibit; but, not for this one.

23 Q And, Doctor, you limited it to that exhibit, did
24 you, sir? Did you, sir?

1 A We limited it to that exhibit insofar as the
2 abnormal findings are concerned.

3 Q Now, Doctor, don't you recall us going into the
4 matter of these laboratory findings and your using the
5 words interchangeably when you use them?

6 A Not in all instances, no. Effects must have an
7 association with something. It's an effect of what?

8 Q Of exposure to a toxic substance, Doctor. Didn't
9 you say on the 3rd of March, Doctor, that a laboratory
10 finding is equivalent to a laboratory effect?

11 A That's what you wanted me to say, sir, and I did
12 it, sir.

13 Q Oh, you did it for me, Doctor?

14 A Yes, sir.

15 Q And you are going to say everything else that I
16 want you to say, Doctor--

17 A No, sir.

18 Q --so we can move on?

19 A No, sir.

20 Q Well, then, why did you choose to say that just
21 for me, Doctor?

22 A In order to close the discussion so that we didn't
23 have an harang about it.

24 Q And, Doctor, then you didn't mean what you said?

1 A Oh, I did, sir.

2 Q Now, Doctor, did you mean what you said?

3 A I did, sir, in the case of this particular thing.

4 Q No, on the 3rd of March, which was yesterday, did
5 you mean what you said, sir?

6 A I did at the time, sir, yes.

7 Q But, now have you changed your mind?

8 A I haven't changed my mind, sir. I haven't changed
9 my mind.

10 Q The 3rd of April, which was yesterday. I said 3rd
11 of March. Have you changed your mind since yesterday,
12 Doctor?

13 A No.

14 Q Sir?

15 A No, sir, I haven't.

16 Q You said what you meant there yesterday?

17 A Yes, I did, sir.

18 Q All right. Now, Doctor, I would like to pass if
19 you will to--and there are a number--do you know how many
20 people at Krummrich have one or more of these laboratory
21 findings or effects, Doctor?

22 A I'm not altogether--they all have laboratory
23 findings.

24 Q Excuse me, Doctor. My question is: Do you know

1 how many have one or more, sir?

2 A All of the 106 people who had laboratory exami-
3 nations had laboratory findings.

4 Q Well, Doctor, that isn't true.

5 A Yes, it is so.

6 Q No, Doctor, there were 10 that did not.

7 A No. There were--there were 115; 115.

8 Q There were 108, Doctor, that had laboratory tests.

9 A All right. So, then, there were 108 people that
10 had all of the laboratory findings that were listed in the
11 report, sir.

12 Q Well, Doctor, but they were not outside the normal
13 reference range, were they, sir, for all 108?

14 A Many of them were not.

15 Q My question to you, Doctor, is--

16 A Many of them were not.

17 Q Do you know how many of these workers had test
18 results that were outside the normal reference range?

19 A I do not. I can't tell you off-hand, sir.

20 Q No, Doctor. Would it surprise you if you added
21 these up that it would come up to 90, sir, if you include
22 the lipids?

23 A By whose count, sir?

24 Q Sir?

1 A By whose count?

2 Q By MEIPATH's results outside the normal reference
3 range; the evidence in this case, Doctor, that you created,
4 that you prepared, that you sent away and got--by that
5 count, Doctor?

6 A Either low or high or--

7 Q Yes.

8 A Or it doesn't matter how far outside the range?

9 Q That is correct, Doctor; that is absolutely
10 correct.

11 MR. HEINEMAN: Objection. Hold it, please.

12 Approach the bench?

13 THE COURT: Sure.

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

16 MR. HEINEMAN: You know, Mr. Carr is trying to
17 boottrap this manure that's listed on the top of 1507A of
18 this abnormal lab reports by calling these reference ranges
19 "normal reference ranges". I've objected to this before,
20 your Honor. A reference range is a reference range. It's
21 not normal and it's not abnormal. And the MEIPATH reports
22 don't say "outside normal reference range"; they say
23 "outside reference range". And so, that question is mis-
24 leading, and I object to it.

1 MR. CARR: I have nothing to say on it. It's not
2 misleading. The witness knows exactly what's in the
3 METPATH reports, and it's exactly the way I am using the
4 word. And so does everybody else.

5 THE COURT: Objection is overruled. Are you at
6 at point where we can take a break?

7 MR. CARR: Did I get an answer to that question?

8 THE COURT: No, you didn't.

9 MR. CARR: Well, just let me sum that up, and
10 then we will take a break.

11 THE COURT: Okay.

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

14 Q Doctor, for your report that you submitted, can I
15 take it then that you did not add up the number of these
16 Krummrich plant workers that had results outside the estab-
17 lished reference range?

18 A We certainly did not, sir.

19 MR. CARR: Your Honor, then we're at a good
20 place.

21 THE COURT: Fine. We'll take a short break at
22 this point in time and resume testimony. The admonish-
23 ments that I gave you earlier will apply during this break
24 also. Court is in short recess.

1 (At this time a recess was taken.)

2 (The following proceedings were had in the
3 hearing and presence of the jury following the recess.)

4 THE BAILIFF: Everyone please rise. You may be
5 seated.

6 THE COURT: Ladies and gentlemen, in keeping with
7 what we've tried to do as far as in the days that we'll
8 have off, next Tuesday, which is April 8th, we won't be
9 holding court, so that you can mark that down in your books
10 if you would, please. And we'll--so far as I know, those
11 are the only days--that is the only day, rather, that we
12 won't be holding court in April. You may proceed.

13 Q (By Mr. Carr) Doctor, do you have your--the final
14 report, the Tables from your final report of your Krum-
15 mrich study?

16 A Yes, I do, sir.

17 Q I'm sorry?

18 A Yes, I do.

19 Q Would you--that would be Plaintiff's Exhibit 1808.
20 Would you turn to the--that part of your final report that
21 is--the section of your final report that deals with
22 262/268 Exposure versus Demographic Information either in
23 Department 262 or 268.

24 A I have it, sir, yes.

1 Q And, Doctor, three quarters of the way--there's a
2 large number of Tables that are in that particular part of
3 your contemplated final report; is there not, sir?

4 A Yes, there are.

5 Q Doctor, if you would turn to the Table about
6 three-quarters of the way through that with the blood
7 reference range units. Yes, this one.

8 A Okay.

9 Q You've gone too far.

10 A I'm sorry.

11 Q Still too far. And you are still too far. Now,
12 you are there at the beginning of it. I think that's--yes.

13 A That's sodium.

14 Q All right. Now, Doctor, there is a table without
15 a number; is there not, sir? You had planned to give it a
16 number?

17 A Yes. None of them have numbers yet, yes.

18 Q And, Doctor, there is in this Table, the first
19 laboratory test that you report on there is for sodium; is
20 it not, sir?

21 A It is, sir.

22 Q And, Doctor, do you give the reference range there
23 for sodium, the laboratory reference range?

24 A Yes, there's a reference range given, sir.

1 Q Doctor, all of the persons that said no "Ever in
2 Department 262" and all of the persons that said yes had
3 test results within the established reference range; did
4 they not, sir, for sodium?

5 A Yes, I believe so.

6 THE COURT: I'm sorry, Doctor, I couldn't hear
7 the answer.

8 THE WITNESS: Yes.

9 Q What do you report in this Table for magnesium?

10 A Yes.

11 Q Do you report in your final report, sir, that
12 persons are outside the normal reference range?

13 A In the report, this--the report that you have--

14 Q Doctor, I'm talking about your report, 1808, what
15 you said is going to be part of your final report.

16 A No, we do not, sir.

17 Q You don't have that?

18 A Well, we don't have any reference to the--

19 Q Excuse me, Doctor. My question is: Do you not
20 have--have I got the right document you've got? You sent
21 me some Tables that you said were part of your final
22 report.

23 A Yes; right.

24 Q Are we at the same Table, sir?

1 A I believe so.

2 Q Now, what do you have in this Table, sir, for
3 magnesium? How many persons that were never in Depart-
4 ment 262 or 268 do you show as having results below the
5 established reference range for magnesium?

6 A Who are never in the department?

7 Q Yes.

8 A We have two--two, sir, right.

9 Q You report that two in the magnesium were below;
10 do you?

11 A We do.

12 Q And how many of above in this Table that you
13 reported on, sir?

14 A Well, in the--those who were not in 262 or 268, we
15 have 10.

16 Q Ten that were above?

17 A And three in those who were in 262 or 268.

18 Q And for the, yes, we have, for magnesium you have
19 three above; do you not, sir?

20 A Three--

21 Q I'm sorry, three above and none below?

22 A Three outside of the reference range.

23 Q No, that's three greater than your reference
24 range?

1 A Yes, but--on the upper side, yes.

2 Q Isn't that three you report that's above the
3 reference range, sir?

4 A Yes.

5 Q Do you report there how much above the reference
6 range they are?

7 A We do not here, sir, no.

8 Q Do you report how much below they are of the
9 normal reference range?

10 A No, sir.

11 Q All right. Now, Doctor, the next test, let's see,
12 that you referred to was po--

13 A Potassium.

14 Q Potassium. All right, here it is.

15 A Right.

16 Q And, Doctor, in that report, sir, how many are--

17 A Above the--

18 Q --below--I'm sorry, above the reference range?

19 A There's one in the group that was never in 262 or
20 268.

21 Q And none in the other?

22 A And none who were in 262 or 268.

23 Q Now, Doctor, you also calculate a "P" value for
24 the magnesium; don't you, sir?

1 A Yes.

2 Q Is that "P" value, that's a complicated formula
3 you use; is it not, sir?

4 A Yes, it's a formula which--

5 Q Excuse me. My question is that it is a compli-
6 cated formula that you used for this magnesium; didn't you?

7 A Right.

8 Q Doctor, chloride is also one of the tests that you
9 mentioned; is it not, sir? You report--

10 A Right.

11 Q --in this Table on the results of the chloride;
12 don't you?

13 A We do, sir.

14 Q And how many below the established reference range
15 do you report, sir?

16 A We report two who were not in Department 262--

17 Q And in that same--

18 A --below the reference range.

19 Q Excuse me, Doctor. How many are above the--

20 A One.

21 Q --the laboratory reference range?

22 A One.

23 Q For chloride. And the "Never in that Department",
24 you have none for each of that; do you not?

1 A Right, we do, sir.

2 Q And you also established a "P" value there; don't
3 you, sir?

4 A Yes, we do.

5 Q DF 6.6262; don't you, sir?

6 A Right.

7 Q Doctor, was calcium one of the ones? No, you
8 didn't give us calcium as--

9 A No, I don't believe we did.

10 Q How about phosphorous?

11 A We did, I think, give you phosphorous.

12 Q All right. Phosphorous is reported.

13 A There were none.

14 Q Sir?

15 A None in either of the--

16 Q And you also gave us iron; did you not, sir?

17 A I believe we gave you iron.

18 Q And in iron, sir, how many were below the labor-
19 atory reference range?

20 A One.

21 Q And how many were above that?

22 A Two.

23 Q And in the other department, it's zero in each
24 instance; isn't it, sir?

1 A Right, yes.

2 Q Now, Doctor, were there any others that you said
3 were not important to you?

4 A No, I don't believe so.

5 Q And, Doctor, in addition to relating these and
6 reporting in your final reports your findings with regard
7 to sodium, magnesium, potassium, chloride, phosphorous, and
8 iron, you reported on--and by the way, these headed your
9 Table; didn't they, sir?

10 A Sorry?

11 Q These were the ones that headed the Table you
12 created reporting on these laboratory results?

13 A That's how they were presented in the METPATH, and
14 I think we simply followed the list.

15 Q Doctor, my question is: You headed the Table with
16 that; didn't you?

17 A I'm not sure what you mean by headed.

18 Q You lead the Table off with these results; didn't
19 you, sir?

20 A We headed the reference range results.

21 Q Doctor, would you--

22 A But they are presented--there are other ways that
23 we have presented this as well.

24 Q Doctor, my question is: On this Table, you lead

1 off with these results; didn't you, sir?

2 A That's how they are presented in MEIPATH, sir.

3 Q Doctor, do you want to look at MEIPATH's and tell
4 me how they presented it, whether they lead off in MEIPATH
5 with those results. They didn't; did they?

6 A No, they didn't. But, we put all the--

7 Q Doctor, just please answer my questions.

8 A Sure, I'd be happy to, sir, any time.

9 Q They did not lead off with those results; did
10 they?

11 A No, I thought they did, but we simply put--

12 Q As a matter of fact--

13 A We put all the metals together, sir. That's what
14 we did.

15 Q Doctor, as a matter of fact, what you did, you
16 went down through the MEIPATH result and extracted these to
17 lead off with that; did you not, sir?

18 A No, sir.

19 Q Did you extract these from the MEIPATH report?

20 A Oh, we sure did.

21 Q And you lead off with them; did you not, sir?

22 A We decided that those were the--

23 Q My question is specific. You lead off with them;
24 didn't you?

1 A I don't know what you mean, 'sir, by lead off.

2 Q Those were the first results you reported in the
3 Table you just went through, sir?

4 A Some of them are, yes. So?

5 Q Doctor, in addition to the conclusion of these in
6 that Table, you also included those results and put them in
7 a Table dealing with mean values; did you not, sir?

8 A I believe we put the mean values before we went to
9 the--the reference range values, yes.

10 Q Is that a yes to my question, that you did include
11 them in the mean values, Doctor?

12 A I think I've answered the question.

13 Q Doctor, for the mean values for these, you also
14 age-adjusted them; didn't you, sir?

15 A I believe they were age-adjusted by the biostatisti-
16 cian, yes.

17 Q Well, would you want to check and see, Doctor,
18 because I'm not asking for your belief, I'm asking for what
19 you in fact did, sir. It's the preceding half dozen pages,
20 Doctor, in that section of your final report. Do you see
21 that, Doctor? Do you see it, Doctor?

22 A I'm not sure I do, sir.

23 Q Well, let me show you the one I have. Yes, you
24 have it right there. Do you see it? That's it.

1 A Oh, okay.

2 Q That's not the first page of it, Doctor. Let me
3 assist you. That's the first page of it.

4 A Thank you.

5 Q Now, Doctor, you have these same laboratory
6 results reported in that section in a Table; don't you,
7 sir?

8 A Yes, we do.

9 Q And, Doctor, you calculate a "P" value for each of
10 those means; do you not, sir?

11 A Correct.

12 Q Yes. Doctor, would you now take the Table that's
13 headed "Chloracne by Age and Education", sir.

14 A You mean the--oh, that's another report, sir, yes.

15 Q I left my writing pen somewhere. Are you with me,
16 Doctor, on the one that you've got headed "Chloracne by Age
17 and Education"?

18 A Yes, sir.

19 Q And are you with me where you've got the Table
20 headed "Chloracne versus Clinical Laboratory Findings"?

21 A Yes, I have it, sir.

22 Q And again, the sodium is the same for--and this
23 time you discuss these three laboratory--these half dozen
24 laboratory findings breaking it down in three categories;

1 that is, "History Only", "Residual Chloracne" and "Never
2 Chloracne"; do you not, sir?

3 A Precisely, yes.

4 Q And you also calculate a "P" value there; don't
5 you, sir?

6 A We do, yes.

7 Q Doctor, that's--and you--again you calculate and
8 report to whoever is going to read this report what the
9 magnesium levels were in these workers at the Krummrich
10 plant, whether they were above the laboratory reference
11 range or whether they were below; don't you, sir? Isn't
12 that correct, sir?

13 A No. We--no, that's not--are you looking at the
14 laboratory reference range or mean values, sir?

15 Q I'm looking at the laboratory reference range.

16 A Well, I'm sorry, I thought you said mean values at
17 first. I have it, yes.

18 Q Doctor, you report the laboratory results of above
19 and below; do you not, sir? For magnesium?

20 A As related to the acne status, sir, as related to
21 the acne status.

22 Q Doctor, that's what I'm asking.

23 A Not the buildings, but the acne status.

24 Q I'm sorry?

1 A Yes, sir.

2 Q I'm asking you, Doctor, you report on magnesium
3 for those workers who had levels of magnesium below the
4 established reference range, do you not, sir, as well as
5 for those above; don't you, sir? Doctor, are you looking
6 at the Table that I'm asking you to look at?

7 A Yes, I believe we do, sir.

8 Q And, Doctor, in the case of magnesium, it is, for
9 "History Only" it is--

10 A One. Are you talking about below reference range?

11 Q Just one moment, please. Now, Doctor, you have
12 one below, do you not, sir, in the "History Only"?

13 A Right.

14 Q And four above; don't you, sir?

15 A In the "History Only", yes, sir.

16 Q And in the "Residual Chloracne" for magnesium, you
17 have one below and five above; don't you, sir?

18 A Correct, sir.

19 Q And for the "Never Had Chloracne" you have none
20 below and four above; don't you, sir?

21 A Correct.

22 Q Doctor, without going through each of these
23 others, you make reports for both above and below in all of
24 the categories you've established in this Table; that is,

1 "History Only", "Residual Chloracne", and "Never Chlor-
2 acne"; do you not, sir?

3 A Not always sir. It depends upon whether we
4 found--for example, if we didn't find any across the board
5 for--

6 Q Either above or below--

7 A For example, in potassium, sir, if I may take a
8 moment. There were none below the reference range, so we
9 didn't include it; but, there were one above the reference
10 range, so we included the reference--the reference limit
11 for the above.

12 Q Doctor, for each of these values for each of these
13 laboratory tests where there was a reported value that was
14 below the established reference range--

15 A We included it.

16 Q You reported it; did you not, sir?

17 A Yes, we did.

18 Q And analyzed it; did you not, sir? And reported
• 19 on your analysis; did you not, sir?

20 A Well, the--

21 Q Would you answer that question, Doctor?

22 A I'm not sure what you mean by analysis. You mean
23 the analysis of the blood or the analysis of the data?

24 Q Your "P" value, Doctor.

1 A Oh, yes, the "P" value is a comparison.

2 Q Doctor, you reported a "P" value in each instance
3 where you had values; did you not, sir?

4 A Correct, right.

5 Q And, Doctor, that was, with regard to the "P"
6 value, you included the below and above reference ranges;
7 did you not, sir?

8 A No. The "P" values refer to the--if there was any
9 difference in the frequency. The "P" value refers to
10 frequency, sir.

11 Q Frequency of abnormal results?

12 A Frequency when you compare one to another, right.

13 Q And, Doctor, that frequency included all abnormal
14 results; did it not, sir?

15 A No, the frequency only included the results of the
16 particular parameter, like magnesium or potassium or
17 chloride.

18 Q Doctor, it included the values both above and
19 below the established reference range; did it not, sir?

20 A Yes, sir.

21 Q Yes, Doctor. The "P" values that you established
22 and that you reported and used--and, Doctor, this wasn't
23 just in the instance of these particular laboratory tests,
24 that was in the instance of every single laboratory test

1 that you did?

2 A Sure.

3 Q You used the below results and you used the above
4 results in establishing your "P" values; did you not, sir?

5 A Yes. Yes, the comparison.

6 Q Yes, Doctor, for comparison, because you consid-
7 ered it important to do so from a scientific basis; isn't
8 that right, sir?

9 A Right.

10 Q So, it was important for you to consider these
11 results both above and below from a scientific basis;
12 wasn't it, sir?

13 A Yes, it was.

14 Q Yes, sir. And, Doctor, you did--and you reported
15 for each category and made a table for each category for
16 each laboratory result reporting both the above and below
17 result; did you not, sir?

18 A We did, sir.

19 Q And, Doctor, in addition--

20 A No. I'm sorry, sir, may I correct that?

21 Q I'm sorry?

22 A May I correct that? May I correct that? I
23 believe that the "P" values in all of these are--only
24 relate to the--the line where it says above a certain

1 level, it's the comparison of those that are outside the
2 range above. Now, it might be, for example, in the--let's
3 see where we are now--no, the "P" values only consider
4 those which are significantly abnormal outside of range,
5 like--

6 Q Now, Doctor, where is that indicated in anyplace?

7 A Well, I think you have it right here.

8 Q Where is that indicated in anyplace, Doctor?

9 A Here. For example, here.

10 Q Doctor, that doesn't tell you at all whether or
11 not they are significantly outside of the range. All you
12 are reporting there on are the ones that are outside the
13 range.

14 A That's right.

15 Q But, you are not saying how much outside the range
16 or whether they are a tenth of a point above the range;
17 you're simply reporting on those that are outside the
18 range; isn't that correct, sir?

19 A Yes. But, if it's not significant--if the low
20 level is not significant, we didn't get a "P" value. But,
21 if the--

22 Q Doctor--

23 A For example--

24 Q Doctor, you make no report for any--you make no

1 "P" value for any low level, do you, sir, as such? You
2 don't put anything on a line for that; do you, sir?

3 A No.

4 Q But, in point of fact, Doctor, there are a number
5 of important consequences that come from certain laboratory
6 tests where there is a low level; isn't there, sir?

7 A That's true, sir.

8 Q Now, you make no report on that; do you, sir?

9 A Yes, we do, sir.

10 Q Where, sir? Look at the red blood cell count;
11 look at the hemoglobin count, sir. You have people--the
12 hematic count, sir. Whether you are above or below the
13 established reference range in that--in those circum-
14 stances--is important; isn't it, sir?

15 A Oh, very much important.

16 Q And, Doctor, you make no finding on the "P" value
17 separately for those below; do you, sir?

18 A I believe, very frankly, sir--

19 Q Doctor, I'd like for you to look at your report;
20 you are not looking at your report; at the Table, sir.

21 A I'm looking at the--what the biostatistician has
22 listed as her--the way she has conducted the analyses, sir.
23 At this point in time I cannot tell you whether or not she
24 has used both high and low to calculate her "P" value, but

1 I believe she did, sir.

2 Q May I see your report, Doctor?

3 A Sure, by all means. The way she originally
4 estimated.

5 Q Now, Doctor, she clearly has reference to both
6 above and below; does she not, Doctor?

7 A Yes, I think so, sir.

8 Q Yes, she does; doesn't she, Doctor?

9 A You were right originally, sir.

10 Q Yes, I was; wasn't I, Doctor?

11 A Yes.

12 Q Now, Doctor, these same reports, sir, are made in
13 the rest of your final report; aren't they, sir? With
14 reference to the magnesium, the potassium, the phosphorous,
15 the chloride, you make Tables including and reporting on
16 the laboratory test results for each of those; don't you,
17 sir?

18 A Yes, sir.

19 Q In every single conceivable category; don't you,
20 sir?

21 A If you mean every single conceivable category--

22 Q That you prepared?

23 A Yes, all of the different types of Tables.

24 Q And you report consistently both the above range

1 and below range--

2 A Yes, we do.

3 Q --values; don't you, sir?

4 A I think so.

5 Q Yes. Thank you. And, Doctor, these reports that
6 the biostatistician made were done, I take it, at your
7 direction; were they not, sir?

8 A The types of analyses; that is, what to compare.

9 Q And the tests to use in the comparison were done
10 at your direction; weren't they, sir?

11 A No, all of the tests were analyzed.

12 Q Excuse me. Would you answer my question, please,
13 sir? You instructed, if you wanted a test omitted, if you
14 believed that it was not important or significant to report
15 on a particular test--for instance, if the results were
16 below the established laboratory value--you would have
17 instructed the biostatistician to not report on something
18 that was not significant; would you not?

19 A No, sir, we did not do that. Absolutely not.

20 Q Doctor, the--

21 A She reported all of the tests. She analyzed for
22 all of the tests except the porphyrins.

23 Q And, Doctor, what she analyzed for on all the
24 tests were--

1 A She analyzed for--

2 Q Excuse me, Doctor, let me finish my question.

3 A --out of range values and means.

4 Q She analyzed the tests that you originally
5 ordered; did she not, sir?

6 A All of them, yes.

7 Q Sir?

8 A Yes.

9 Q And she analyzed the tests that you said in your
10 preliminary draft were included in the laboratory exami-
11 nation; did you not, sir?

12 A I believe so.

13 Q And you reported to Monsanto and to others who
14 would read it the differences between the chloracne group
15 and nonchloracne group for these circumstances; did you
16 not, sir?

17 A And other circumstances.

18 Q Did you not, sir?

19 A Yes. Yes, and other circumstances.

20 Q And you reported on the difference between on
21 these tests for the workers in one department versus the
22 workers in another department; did you not, sir?

23 A We did indeed, sir, yes.

24 Q Now, Doctor, I'd like to move to another subject

1 at this time if we might, and I'd like to turn to the
2 subject that we--that you have discussed on direct exami-
3 nation dealing with the formation of dioxins, sir, and how
4 they are formed and where they are formed. Now, Doctor,
5 just one question before I get to that. You meant for the
6 people who were reading your final report or who would read
7 it to rely upon these results that you reported; did you
8 not, sir?

9 A If you are talking about the--

10 Q My question is, sir--

11 A Which report are you talking about?

12 Q What you have categorized here as your final
13 report which includes these test results that we've just
14 discussed. You meant for the people reading these reports
15 and reading these Tables to rely upon the results thereof;
16 did you not, sir?

17 A Yes, sir, sure.

18 Q Yes. Now, Doctor, among others--and you are going
19 to have to help me with the pronunciation of this man--at
20 this conference that you attended was someone by the name
21 of Czuczwa. How do you say the name of that man?

22 A I believe it is Czuczwa.

23 Q All right. Let me mark it as an exhibit so we--

24 A I don't know him sir.

1 Q Well, he was at that conference; wasn't he?

2 A No, that isn't the result of any conference I've
3 been at.

4 Q I know it's not, but the author was at the
5 conference; wasn't he, sir? Don't you recognize him?

6 A Which conference?

7 Q On Dioxins in the Environment that you've
8 discussed earlier?

9 A He might have been at the conference, but I don't
10 recall his giving a paper there. And it might be that I
11 didn't--I don't recall his giving a paper.

12 Q Doctor, we went through that book and you said
13 they were all experts except one or two. And wasn't this
14 person on that book?

15 A I don't recall, sir.

16 Q Well, let me remind you a little bit. See, that's
17 the caption Dioxins In The Environment, and he wrote
18 Chapter 7. Do you see that, sir?

19 A Yes, sir, I see it.

20 Q All right. Thank you, Doctor. Doctor, handing
21 you now what's been marked as Plaintiff's Exhibit 1809--

22 A Thank you, sir.

23 Q This is an article written by the man's name that
24 I can't pronounce.

1 A Czuczwa and Hitas.

2 Q And they are from the--

3 A University of Indiana.

4 Q And this article was published in the journal
5 called--what is that, Doctor--Environmental Science and
6 Technology? Oh, it's by the American Chemical Society?

7 A It's the--the journal is called Environmental
8 Science and Technology, sir.

9 Q But, it's published by the American Chemical
10 Society?

11 A It is, sir.

12 Q Would you consider it an authoritative journal,
13 sir?

14 A For chemists, I believe so.

15 Q And you recognize Doctor--or I don't know if he's
16 a doctor or not; it doesn't say here--as at least one of
17 the authors that appeared at the conference that you've
18 earlier described?

19 A Yes, sir.

20 MR. CARR: Offer this Exhibit, your Honor.

21 MR. HEINEMAN: May Counsel approach the bench?

22 THE COURT: Yes.

23 (The following proceedings were had out of the
24 hearing and in the presence of the jury.)

1 MR. HEINEMAN: What's the number on it?

2 THE COURT: 1809.

3 MR. HEINEMAN: Your Honor, I object to the
4 exhibit on the grounds that it's hearsay. It's simply not
5 admissible.

6 THE COURT: Do you have any comment?

7 MR. CARR: Your Honor, we've gone all through
8 these things before.

9 THE COURT: Okay. It's admitted over objection.

10 (The following proceedings were had in the
11 hearing and presence of the jury.)

12 Q Doctor--

13 MR. CARR: Oh, and your Honor, I think we have,
14 yes, we do have copies to pass to the jury.

15 THE COURT: All right.

16 (At this time the documents were passed out to
17 the jurors.)

18 MR. HEINEMAN: Excuse me, your Honor. May
19 Counsel approach the bench?

20 THE COURT: Sure.

21 (The following proceedings were had out of the
22 hearing and in the presence of the jury.)

23 MR. HEINEMAN: Your Honor, I would like to object
24 to any testimony or any questioning with respect to this

1 article if it is to relate to the manner in which dioxins
2 are formed. Mr. Carr represented that this witness covered
3 that subject in direct examination. I believe he did not.
4 And this certainly goes beyond the scope of the direct
5 examination of this witness.

6 MR. CARR: This witness said in direct exami-
7 nation that dioxins are caused by municipal incineration
8 or something of that sort. The exact quote I can't recall
9 right now. But, that's what this witness alluded to on
10 direct examination. And in addition thereto, the scope of
11 his direct examination is such that dioxins by his state-
12 ments are not--not rampant in the environment, are not
13 caused by chemicals, are not caused by polychlorinated
14 phenols, and the chemical companies are not responsible for
15 what has happened to the environment. That's the--as well
16 as the direct reference to the formation of dioxins in the
17 environment.

18 MR. HEINEMAN: Well, that is a preposterous mis-
19 statement of the witness' testimony, your Honor. I object
20 to this document as going beyond the scope of the direct
21 examination.

22 THE COURT: It's within the scope. Objection is
23 overruled.

24 (The following proceedings were had in the

1 hearing and presence of the jury.)

2 Q Now, Doctor, at the conference that you attended,
3 and for that matter other conferences that you've attended,
4 it has been important in discussing dioxins to discover the
5 source of dioxins; isn't that correct, sir?

6 A Yes, sir.

7 Q And it is an important subject to cover for, not
8 just for this case, but for humanity in general; is it not,
9 sir?

10 A Oh, I believe so, yes, sir.

11 Q Yes. And, Doctor, it's a subject that you have
12 considered and discussed and testified about in not just
13 this case, but other cases in the past; isn't that correct,
14 sir?

15 A I have in at least one.

16 Q Yes. Now, Doctor, the heading of this report is
17 "Environmental Fate of Combustion-Generated Polychlori-
18 nated Dioxins and Furans". Do you see that, sir?

19 A Yes, sir.

20 Q Now, that includes the dibenzo-furans as well as
21 the dioxins; doesn't it, sir?

22 A Yes, I believe so.

23 Q And we've earlier discussed the differentiation
24 between those, and I won't ask you a question about that,

1 but the abstract here discusses again that--the abstract of
2 their study shows the conclusion that they reached by
3 studying the sediments in various places in the northern
4 part of the country that, "Emissions of dioxins and furans
5 has increased greatly since 1940. The historical increase
6 is similar to trends for the production, use, and disposal
7 of chlorinated organic compounds and suggests that chlori-
8 nated precursors of dioxins and furans, present in
9 incinerator combustion fuels, may be the main source of the
10 dioxins and furans found in the sediments from the Saginaw
11 River and Bay and Lake Huron." Isn't that correctly read,
12 Doctor?

13 A That's what the abstract reads, yes.

14 Q And, Doctor, on the next page at the very top of
15 the page when they get into the fundamental point in the
16 debate, they say, do they not, sir, that, "PCDD, that is,
17 polychlorinated-dibenzo-dioxins, and PCDF, that's poly-
18 chlorinated-dibenzo-furans, may be formed by the cycli-
19 zation of chlorinated precursors present in the fuel or by
20 the reaction of organic compounds with inorganic chlorine
21 both present in the fuel. It is likely that the first
22 mechanism is operative; model pyrolysis experiments have
23 shown that PCDD and/or PCDF are formed by pyrolyzing
24 chlorinated precursors such as chlorobenzenes, chloro-

1 phenols, and PCB's." Isn't that correct, sir?

2 A That's what this report reads, sir, yes.

3 Q Now, Doctor, in that group they included chloro-
4 phenols; have they not, sir?

5 A Yes, I believe they have, sir.

6 Q And, Doctor, we know from the evidence in this
7 case and elsewhere that chlorophenols were involved--
8 Monsanto manufactured chlorophenols both at Nitro and at
9 Sauget, Illinois; isn't that correct?

10 A They have manufactured some, sir, yes.

11 Q And, Doctor, they say these chlorinated phenols
12 are precursors to the dioxins and to the furans; do they
13 not, sir?

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

16 (At this time the previous question was read back
17 by the court reporter, as requested.)

18 A Yes, they do, sir.

19 Q Now, Doctor, precursor means go before or is there
20 first; correct, sir?

21 A Yes.

22 Q So, what they are saying is that the chlorophenol,
23 it's first chlorophenol and then something happens to it
24 and it becomes the dioxins or the furans; isn't that

1 correct, sir?

2 A No, it would be not dibenzo-furans from the
3 phenols, sir.

4 Q Excuse me, Doctor. Aren't they saying that in
5 this--whether you agree with it or not--"These dioxins
6 and/or furans are formed by burning chlorophenols, chloro-
7 benzenes, and PCB's"? That's what pyrolyzing means, isn't
8 it, sir?

9 A Pyrolyzing means to--

10 Q Heat up?

11 A Heat up, yes. Pyrolysis.

12 Q Sir?

13 A Yes.

14 Q And that's how you know in the chemical plant, for
15 instance, it is the heating up of those chlorinated phenols
16 that can cause in some instances, not all, in some
17 instances the formation of dioxins; isn't that correct?

18 A Yes, I believe so.

19 Q And furans, too?

20 A It depends on the level of heat, sir, yes.

21 Q And furans, as well?

22 A With respect to the PCB's, sir.

23 Q Sir?

24 A Only with respect to PCB's, sir, not phenols.

1 Q Doctor, these chemists say, do they not, sir, in
2 this document that PCDD and the PCDF are formed by pyroly-
3 zing these chlorinated precursors such as among others
4 chlorophenols?

5 A Yes, but they--

6 Q Doctor, I take it that you disagree?

7 A No, I don't disagree, sir. I'm only disagreeing
8 with your interpretation.

9 Q Excuse me, Doctor. Don't they say that these
10 dioxins and/or these furans are formed by heating up
11 chlorophenols?

12 A No, they do not, sir.

13 Q They don't say that?

14 A They say that either--that PCDD or PCDF are formed
15 by pyrolyzing chlorinated precursors such as chloro-
16 benzenes.

17 Q What's the next one, Doctor?

18 A PCDD might be related to that. Chlorinated
19 phenols would produce perhaps--

20 Q Excuse me, Doctor.

21 A --PCDD; but, only the PCB's produce the PCDF's.

22 Q Doctor, you skipped a word there; didn't you, sir?
23 In between chlorbenzenes and PCB's, there's another word
24 there.

1 A Yes, chlorinated phenol.

2 Q Chlorophenols, Doctor.

3 A Sure, yes, chlorophenols.

4 Q And these authors say, do they not, that PCDD
5 and--

6 A And/or.

7 Q Yes, Doctor, and/or; doesn't it, sir?

8 A But, what the really mean is that--

9 Q Now, Doctor, I'm not asking you what they really
10 mean; I'm asking you what they say.

11 A They say exactly what it says, sir.

12 Q All right, Doctor.

13 A But, you are misinterpreting it; that's all.

14 Q Doctor, is the word "and/or" there?

15 A Yes, sir.

16 Q And we all know what "and" means; don't we, sir?

17 A Yes, sir.

18 Q And when they are talking about PCDD, they are
19 saying PCDD and/or PCDF are formed; don't they, sir?

20 A Right. Right.

21 Q They are saying when you pyrolyze a chlorinated
22 precursor such as chlorobenzenes, you form PCDD'S and/or
23 furans; don't they, sir?

24 A No, sir.

1 Q Isn't that what they are saying, Doctor?

2 A No, they are not.

3 Q You don't get that from that sentence, Doctor?

4 A No, I don't.

5 Q Well, let's pass on then; I'm sure the jury and
6 Court can read it--

7 A Yes, I think so.

8 Q --if you can't. Doctor, on page 447.

9 A Yes, sir.

10 Q First of all, they go through a situation where
11 they tell you how they dated their sediments, and there are
12 various methods that you're aware of, aren't you, Doctor,
13 where they can tell when a particular sediment was layed
14 down in a lake or a river or a bay?

15 A Well, not being expert in this field, sir, I am
16 not--I don't feel qualified to comment on the accuracy of
17 this. I take it--

18 Q Doctor, I'm not asking you to comment on the
19 accuracy of it, Doctor--

20 A I take it at face value.

21 Q I'm asking you: Do you not know and do they not
22 describe, sir, in this document how these sediments can be
23 dated? There are various techniques, Doctor, that are
24 available to date sediment samples, are there not, accor-

1 ding to this document?

2 A Did you say date them?

3 Q Yes.

4 A Like--

5 Q To tell when they were layed down?

6 A That's on page 446, sir.

7 Q Yes, it is.

8 A Yes. Yes, this is using radioactive determi-
9 nants, sir, yes.

10 Q And, Doctor, on page 447, in the lower right-hand
11 corner they say that they should address the ongoing debate
12 regarding 2,3,7,8-TCDD in coal fly ash. Do you see that,
13 sir?

14 A Yes.

15 Q Because there was, has been, at least you are
16 aware of a statement, I think by Dow Chemical Company, that
17 dioxins got into the atmosphere by the burning of coal;
18 isn't that right, sir?

19 A I think there is at least one paper about that,
20 yes.

21 Q And this document addresses that argument; doesn't
22 it, sir? They call it a debate; don't they?

23 A Yes.

24 Q They say that, "No isomer of TCDD was detected in ,

1 these samples with a limit of detection of about 100 parts
2 per trillion"; don't they, sir? They go on to say, "This
3 reaffirms similar findings"--and give the citations--"and
4 suggests that coal combustion is not a significant source
5 of 2,3,7,8-TCDD in the environment."

6 A That's what this says, sir, yes.

7 Q And, Doctor, over on page 449 where they state
8 their various conclusions in their discussion section, they
9 start out by saying, don't they, sir, that, "Clearly the
10 dioxin and furan inputs have changed considerably over
11 time; much more was deposited since 1940. It seems likely
12 that a major source began in the 1940s and increased until
13 the present time." And then they pose the question, "What
14 is such a source?" Don't they, sir?

15 A Perhaps I'm not following. Is this on 449, sir?

16 Q 449, yes.

17 A And--

18 Q The very first paragraph on that page.

19 A Oh, I see, yes.

20 Q And they point out in the next paragraph that the
21 source of that deposit of these dioxin and furans in the
22 environment is not coal or fly ash, because they say it is,
23 from their dating of their sedimentary dioxins that, "It is
24 obvious that coal use cannot account for the increase in

1 dioxin and furan concentration since 1940. Indeed, coal
2 use has been relatively constant since 1940." Don't they
3 say that, sir?

4 A Yes, sir.

5 Q And they go on to say that according to the United
6 States Commission Reports that has been published since
7 1918, that the chemical industry started growing greatly
8 beginning in 1940; correct, sir? Is that correct, sir?

9 A You are reading again in the--

10 Q The second paragraph--well, actually the third
11 paragraph on that page, in the first column.

12 A Third paragraph.

13 Q Starting with the words, "The U.S. Tarrieff Commis-
14 sion."

15 A Yes, okay.

16 Q Now, Doctor, as a matter of fact, the Monsanto
17 Chemical Company at Nitro began their production of these
18 chlorinated phenols and 2,4,5-T-chlorinated phenol in 1946;
19 did they not, sir?

20 A I really don't know, sir.

21 Q All right.

22 A I don't know.

23 Q If you don't know--Doctor, they go on to say
24 that, "Starting at this time"--that is in 1940--"the

1 production of chlorinated organic compounds such as
2 chlorobenzenes and chlorophenols increased substantially
3 (see Figure 7 in the middle). These compounds are used in
4 a variety of products, including building supplies, herbi-
5 cides, and packaging. Much of these materials eventually
6 become incorporated in solid wastes," and, "The trend for
7 the production of chloro organic compounds is very similar
8 to the sedimentary PCDD and PCDF profiles"; do they not,
9 sir?

10 A That's what this paper says, sir.

11 Q And they go on to say, "From these data, we
12 conclude that the input of dioxins and furans to the
13 sedimentary environment is probably due to the combustion
14 of chlorinated organic products present in various wastes.
15 These wastes may be municipal wastes from Saginaw, Bay
16 City, or other urban areas, or they may be industrial
17 wastes from chemical manufacturing taking place in central
18 Michigan"; do they not, sir?

19 A They say that, sir.

20 Q And they conclude finally, "In any case, it is
21 clear that the high levels of dioxins and furans found in
22 presently accumulating sediments are not due to the advent
23 of fire"; isn't that correct, sir?

24 A I'm not sure I understand that, sir.

1 Q Sir?

2 A That's what they say, but I'm not sure I under-
3 stand that, sir.

4 Q Well, Doctor, you do know that Dow Chemical
5 Company and Monsanto Chemical Company and other chemical
6 companies have urged or argued in public debate, if you
7 will, and in articles published at least by Dow, that the
8 dioxin in our environment comes not from 2,4,5-T or not
9 from the chlorinated phenols made by others, but comes
10 because of the combustion process?

11 MR. HEINEMAN: Objection, your Honor.

12 Q You are aware of that; aren't you?

13 MR. HEINEMAN: May Counsel approach the bench?

14 THE COURT: Yes, you may.

15 (The following proceedings were had out of the
16 hearing and in the presence of the jury.)

17 MR. HEINEMAN: Your Honor, there is no evidence
18 in this case that Monsanto has testified or has stated that
19 dioxin comes from the combustion of coal. If this is a
20 statement by Dow, it is irrelevant to the lawsuit, and I
21 object to it. What Dow thinks or doesn't think is totally
22 irrelevant in this case. And there isn't any evidence in
23 this lawsuit that Monsanto has suggested that dioxin is
24 created by the combustion of coal. The advent of fire

1 theory is a Dow theory, and that is irrelevant.

2 MR. CARR: It is a theory adopted by Dr. Wilson
3 in his testimony in this case when he testified that the
4 accounting for dioxin in the Sturgeon community came from
5 fires burning by farmers, fires that they had burned.
6 That's what Dr. Wilson testified to for Monsanto in this
7 case.

8 THE COURT: The objection is overruled.

9 MR. NASSIF: Wait a minute, your Honor. Wilson
10 did not testify that fire, the Dow theory--that the Dow
11 theory regarding fire, that is, burning wood burning since
12 the prehistoric times has generated dioxins. That's what
13 that last sentence says where it quotes the advent of fire,
14 is a Dow theory. Monsanto has never testified to that
15 theory in this case, either Wilson or Roush. I've been
16 here through all of that testimony. No-one has ever
17 testified that we embrace Dow's theory regarding the advent
18 of fire as being a source of dioxins and furans.

19 MR. CARR: The clear implication of Dr. Wilson's
20 testimony that the dioxin came about because of the fire
21 being burnt by farmers, and in addition, Dr. Wilson tes-
22 tifying about municipal incineration, as did Dr. Roush,
23 being the cause of the TCDD in the fat tissue found in
24 various people. Just because they haven't specifically

1 said, "We agree with Dow's theory" doesn't mean that
2 Monsanto has not adopted and Monsanto has not argued that
3 dioxins have been formed by municipal incineration and
4 burning of wood, because that is exactly what they have
5 said in this case.

6 MR. NASSIF: Wilson argued that the burning of
7 wood treated with chlorophenols, your Honor. The advent of
8 fire means back when prehistoric men were burning trees
9 that were not treated with chlorophenols; it means when
10 fire was invented. Wilson said, "If you burn wood treated
11 with a chlorophenol" which this article is saying, is
12 essentially the same thing, and this is not the advent of
13 fire. Wilson was saying if you take a log and treat it
14 with penton and you burn it, you could get PCDDs and PCDFs.
15 That's what Wilson said. It was not just burning a virgin
16 log untreated, which is what this reference is to the
17 advent of fire. And Dow has said that if you burn
18 untreated wood, you could get PCDDs and PCDFs. No Monsanto
19 witness has embraced that theory in this courtroom.

20 MR. CARR: Your Honor, I'm glad to hear that. Is
21 it Monsanto's position that PCDDs and PCDFs are formed by
22 the burning of wood that's been treated with chlorinated
23 phenols and not simply by burning wood or municipal incin-
24 eration without the chlorine factor involved?

1 MR. HEINEMAN: No. The fact of the matter is
2 that municipal incineration, as the tests have demon-
3 strated, can cause the creation of dioxins, not necessarily
4 just from burning treated wood, but from burning other
5 materials, other organic compounds, that have chlorine
6 atoms in them. It doesn't have to be chlorophenols; it can
7 be other materials that contain chlorine atoms, that
8 contain hydrocarbons, and that the combustion of that can
9 create dioxins.

10 MR. CARR: Well, wood contains hydrocarbons. So,
11 you are now saying that the burning of hydrocarbons causes
12 dioxin now?

13 MR. NASSIF: No, it's not hydrocarbons at all;
14 it's chlorine atoms. And that's what Wilson was saying.
15 He did not embrace the Dow theory. As a matter of fact,
16 your Honor, I think he laughed when Mr. Carr referenced the
17 Dow theory.

18 MR. CARR: Is this Monsanto's position?

19 MR. NASSIF: Monsanto has never taken a position
20 that embraces this advent of fire.

21 MR. CARR: No, my question is: Is it Monsanto's
22 position that dioxins and furans are formed by the burning
23 of wood that has been treated with chlorinated phenols?

24 MR. HEINEMAN: We have said we are not going to

1 be subject to your examination, Mr. Carr. We've made our
2 objection to your question.

3 THE COURT: Your objection is overruled.

4 (The following proceedings were had in the
5 hearing and presence of the jury.)

6 Q Doctor, you do know that in regard to the state-
7 ment of the advent of fire by itself and without anything
8 else, you do know that that is the position that Dow
9 Chemical Company has taken publicly; do you not?

10 A I do not know that, sir.

11 Q You don't know that? All right, Doctor. Well,
12 let's pass on to another exhibit then if we might. Doctor,
13 I hand you now what's been marked as Plaintiff's Exhibit
14 1810 and ask you if you recognize that as Chapter 7 from
15 the book Dioxins In The Environment that you have
16 previously discussed, and that is an article by--

17 A The same author.

18 Q Yes, the same fellow that we mentioned before.

19 A The same author, okay.

20 Q Is that right, sir?

21 A Yes.

22 Q All right.

23 MR. CARR: Offer 18--did I give you one,
24 Counselor?

1 MR. HEINEMAN: No.

2 (At this time a copy of the exhibit was given to
3 opposing Counsel.)

4 MR. CARR: Offer 1B10 into evidence, if it please
5 the Court.

6 THE COURT: Any objections?

7 MR. HEINEMAN: Yes, your Honor, if I can look at
8 it.

9 THE COURT: Sure.

10 MR. HEINEMAN: May Counsel approach the bench,
11 Judge?

12 THE COURT: Yes, you may.

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

15 MR. HEINEMAN: Judge, we would object to this
16 document as being hearsay. There has been--in addition,
17 there has been no foundation layed with respect to this
18 witness, and it goes beyond the scope of the direct exami-
19 nation of this witness, and it has nothing to do with what
20 this witness has been testifying about on his two days of
21 direct. It doesn't even have anything to do with what he's
22 been testifying about in his previous sixteen and a half
23 days of cross examination by Mr. Carr. And it's hearsay,
24 unauthenticated. We object to it.

1 MR. CARR: We've been through this, your Honor.
2 It is authenticated. He's recognized it. He's acknow-
3 ledged it. When we went through this book, he acknowledged
4 that everything in it was authoritative with the exception
5 of the one or two authors. He's already acknowledged the
6 authenticity of the book and as to the expertise of the
7 authors.

8 MR. HEINEMAN: That's not true, Judge. I
9 remember where there were a number of authors that he said
10 he didn't even know and there were some he said were not
11 authoritative.

12 THE COURT: He listed the ones that weren't
13 authorities, and these two weren't on there. Objection is
14 overruled. It is admitted over objection. And it is
15 within the scope.

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

18 MR. CARR: We have copies for the jury.

19 THE COURT: Pass them out.

20 (At this time the documents were passed out to
21 the jurors.)

22 Q Doctor, this article that we've previously
23 identified, you of course have read it before; have you
24 not?

1 A I have perused it before, yes, sir.

2 Q And as a matter of fact, you were there when it
3 was presented; weren't you, sir?

4 A When a paper like this was presented, sir.

5 Q And, Doctor, the article discusses the same
6 subject that the article we just went through discussed,
7 but it is a broader field; is it not, sir?

8 A Yes, I believe it's discussed more thoroughly than
9 the other paper, sir.

10 Q The earlier paper, by the way, was published in
11 1984; was it not, Doctor? The 1809 article?

12 A 1984.

13 Q Yes. Doctor, this article reviews not just their
14 own work that they did, their own original research work,
15 but the work of many others; does it not, sir?

16 A Yes, I believe it does.

17 Q And they also did it, did their work, by analyzing
18 sediments in various places in the Great Lakes, Siskiwit
19 Lake, and in addition in Lake Zurich in Switzerland; did
20 they not, sir? They describe that in the third paragraph,
21 Doctor, of their introduction on the first page.

22 A Yes. Yes, sir.

23 Q And they give in their introduction at least one
24 of their conclusions where they say, "We find from looking

1 at these sediment cores, we find a post-1940 increase in
2 the sedimentary PCDD and PCDF which is related to the
3 production and subsequent incineration of chlorinated
4 aromatic chemicals"; don't they, sir?

5 MR. HEINEMAN: I'm sorry, what page?

6 MR. CARR: Very first page, Counselor, third
7 paragraph, last sentence.

8 MR. HEINEMAN: Thank you.

9 Q Did you acknowledge--

10 A Yes, that's what the authors report, sir.

11 Q Yes. And over on page 87, they discuss the--in
12 the last paragraph on that page, they discuss the fact that
13 the importance of elevated temperatures for the destruction
14 of PCDD and PCDF has only recently been appreciated and
15 they go on to say that, to conclude, that incinerators that
16 are not operated under the most stringent conditions could
17 indeed release large amounts of PCDD and PCDF into the
18 environment and that chemical waste incineration is an
19 important source of dioxins and furans; correct?

20 A That's what the report reads.

21 Q And, Doctor, on the next page, the second to last
22 sentence on that page, they make the same conclusion that
23 chemical--and well, in this case they talk about the
24 burning of chemical products as well as municipal waste

1 incineration; don't they, sir? They make the conclusion
2 that chemical and municipal waste incineration are the
3 major combustion sources of dioxins and furans; don't they,
4 sir?

5 A That's one sentence which is in here, yes.

6 Q And, Doctor, they state on the next page with
7 regard to air particulates that the highest level of OCDD--
8 and that's a particular form of dioxin; is it not, sir?

9 A It is indeed, sir. And I think one has to differ-
10 entiate it from TCDD.

11 Q Yes.

12 A It's the octochlor.

13 Q Yes.

14 A The octochlor.

15 Q I understand that, Doctor. And it's differenti-
16 ated from--that's four rather than--that's eight rather
17 than four chlorine molecules; is it not?

18 A That's true, sir.

19 Q And the highest level of that was found in
20 Midland, Michigan, and that suggested, according to the
21 article that they are citing, that combustion of chemical
22 wastes is an important local source of both polychloro-
23 nated-dibenzo-dioxins and furans; do they not, sir?

24 A I'm not sure that I follow your citation. I'm

1 looking on page 88.

2 Q The very same sentence, Doctor, on page 89.

3 A Oh, 89. You are ahead of me, sir. I'm sorry, I
4 was on 88.

5 Q They say under the paragraph "Air Particulates"
6 includes, the highest level of OCDD is found in Midland,
7 Michigan and that this suggests that combustion of chemical
8 wastes is an important local source of PCDD and PCDF; is
9 that correct, sir?

10 A That would suggest actually that--

11 Q Doctor, my question is: This is what they say; is
12 it not, sir?

13 A That is what this report reads, yes.

14 Q And, Doctor, Midland, Michigan is the location of
15 a Dow Chemical plant; is it not, sir?

16 A I believe it is, sir.

17 Q Doctor, on page 81 there is a Table, a figure, in
18 which they analyze the air particulates for dioxins in
19 various communities. Do you see that, sir?

20 A Is it 91 or 81?

21 Q It's 91.

22 A Ninety-one.

23 Q Did I say 81?

24 A Yes.

1 Q I'm sorry, it's difficult to read that print.

2 That is 91; is it not, sir?

3 A Yes, sir.

4 Q And they have included there St. Louis; haven't
5 they, sir? Do you see that, sir, on that Table?

6 A Yes, they include only the seven carbon and the
7 eight--I mean, the seven chlorine and eight chlorine.

8 Q Doctor, my question is: They include St. Louis,
9 do they not, sir, in that table?

10 A Is that St. Louis or East St. Louis? That's St.
11 Louis, I'm sorry.

12 Q A is Chicago; B is Detroit; C is Midland; D is
13 Dow; and E is St. Louis?

14 A Yes.

15 MR. CARR: Could I have the next marked 1810A,
16 please?

17 Q Now, Doctor, is 1810A a proper blow-up of the
18 Figure 6 that appears in article 1810--Exhibit 1810?

19 A Yes, it is.

20 MR. CARR: Offer 1810A into evidence, if it
21 please the Court.

22 MR. HEINEMAN: Same objection, Your Honor--

23 THE COURT: Same ruling.

24 MR. HEINEMAN: --with respect to the 1810.

1 Q Now, Doctor, there is letters under, for the St.
2 Louis, various symbols; is there not, sir? The ones ending
3 in F standing for furans, the ones that end in the D stands
4 for dioxin; correct, sir?

5 A I believe so.

6 Q All right. And TCDD is one of the categories
7 under there; is there not, sir?

8 A It is, but there's nothing under TCDD. There's
9 none found.

10 Q I'm sorry?

11 A No TCDD is found, sir.

12 Q That's correct, sir. Thank you.

13 A That's important, sir.

14 Q Yes, I agree with you. And, Doctor, the next
15 page--that is, no TCDD was found in the air in St. Louis;
16 correct, sir?

17 A Yes, according to these authors, sir.

18 Q Now, Doctor, the next page deals with the finding
19 of high levels again of octachlorodibenzo-P-dioxin at
20 Midland, Michigan which was close to the chemical waste
21 source; correct, sir?

22 A I don't know whether it was close to it.

23 Q Doctor, this is what they say; is it not, sir?

24 A Yes, I'm sorry, they do say it.

1 Q And they state there, sir, that, "Dioxins are also
2 found in rural locations such as Gaylord, Michigan sug-
3 gesting that atmospheric transport may carry combustion
4 particulates (with their load of polychlorodibenzo-dioxin
5 and polychlorodibenzo-furans) to remote areas." Correct,
6 sir?

7 A That's what this--that's the way this report
8 reads, sir.

9 Q And, Doctor, on the next page, 93, there is
10 another Table for sediments in Lake Huron, Lake Michigan,
11 Siskiwit Lake, and Lake Zurich; isn't that correct, sir?

12 A That is correct, sir.

13 Q And, Doctor, they find in there Aquatic Sediments
14 section that the average concentration of octachlorodi-
15 benzo-dioxin in Lake Huron and in Lake Michigan are equal,
16 and they conclude from that that it suggests to them that
17 atmospheric transport is the common source of dioxins and
18 furans to both areas; do they not, sir?

19 A That's how this report reads, sir.

20 Q Doctor, Lake Siskiwit they are talking about there
21 in the earlier part of that paragraph. They also have a
22 Table there showing the sediments at Siskiwit Lake. That
23 is a lake that's on an island in the middle of one of the
24 Great Lakes, is it not, sir, where it has no farming and no

1 way for water to get to it other than from the atmosphere?

2 A I really don't know, sir.

3 Q You don't know that?

4 A No, I don't.

5 Q Now, Doctor, it will tell you on the next page.

6 A Okay.

7 Q Where they have a table there showing that the
8 tetrachlorodibenzo-P-dioxin is found in Siskiwit Lake;
9 doesn't it, sir? Do you see that table, sir, that they
10 have the TCDD?

11 A Are you referring to Figure 9, sir?

12 Q Figure 9, yes.

13 A That's a figure, sir. Okay.

14 Q It demonstrates that tetrachlorodibenzo-P-dioxin
15 was found in the sediment in Siskiwit Lake?

16 A How much, sir? It's very small, though.

17 Q Doctor, what my question is to you is: It does
18 show that it was found there; doesn't it, sir?

19 A At least one of the--I don't know whether this is
20 isomer specific though.

21 Q Doctor, they are not trying to be isomer specific;
22 they are describing it as tetrachlorodibenzo-P-dioxin;
23 aren't they, sir?

24 A They report it as TCDD.

1 Q And that stands for tetrachlorodibenzo-P-dioxin;
2 doesn't it?

3 A Yes, sir.

4 Q And, Doctor, they go on to say that, in the body
5 of the report, that, in the next paragraph relating to the
6 paragraph--the sentence that ended on the preceding page
7 that we just read that "The Siskiwit Lake sediment provides
8 useful support for this hypothesis. Siskiwit Lake is a
9 lake on Isle Royale, a wilderness island in Lake Superior."
10 Now, wilderness means there's no people there; it's wild
11 territory; correct, sir?

12 A Well, it might mean that people don't have resi-
13 dences there. That's what it might mean.

14 Q Well, Doctor, does wilderness mean to you that it
15 is a wild territory? Surely we don't want to get into an
16 argument on the meaning of wilderness at this late hour.

17 A No, we won't argue about that, sir.

18 Q And, Doctor, it goes on to say, "There is no flow
19 of water from Lake Superior to Siskiwit Lake, so the only
20 mechanism by which dioxins and furans can reach this area
21 is by atmospheric transport." Isn't that correct, sir?

22 A That's how the report reads, sir.

23 Q Now, Doctor, they go on to say then that this fact
24 that they found these dioxins and furans in Siskiwit Lake

1 suggest that atmospheric transport of combustion particu-
2 lates was the major source of dioxins and furans found in
3 these locations of the Great Lakes; correct, sir?

4 A That's how the report reads, sir.

5 Q Now, Doctor, the conclusion that you can reach
6 from that is that the sediment that's in the Great Lakes
7 did not get contaminated with dioxin 2,4,5-T or 2,4-D in
8 any other method other than the transporting of particu-
9 lates in the air; isn't that correct, sir?

10 A Presumably, yes.

11 Q And, Doctor, they go on to, on the next page, to
12 discuss the historical record of dioxins and furans in
13 sediment cores; don't they, sir?

14 A That's the subject title at the top of the page,
15 sir, yes.

16 Q And they find--they pose the question--they pose
17 three questions. And one of the questions is, "Is coal a
18 major source?" And we've answered that--they've answered
19 that earlier that it's not a major source. And then they
20 go on to pose the question, "Can we find any evidence that
21 PCDD and PCDF are formed in significant amounts only when
22 combustion fuels contain chlorinated precursor compounds
23 present in chemical and municipal wastes?" Isn't that also
24 correct, sir?

1 A That's what these authors contend, sir.

2 Q Doctor, do you concede that we are talking about
3 something other than the conclusions reached by these
4 authors? We are talking about conclusions reached by these
5 authors in their own studies and in the analysis of studies
6 by others; aren't we, sir?

7 A No, sir. They leave out coal studies of Professor
8 Rappe.

9 Q Doctor, don't they reference, oh, perhaps 10 or 15
10 articles written by others including Bumb, Buser, Buser,
11 Cavallaro--

12 A Yes, sir.

13 Q Chui, Kelts, Liberti, Liberti, Lustenhower,
14 Nestrack, Olie, and Olie, and Stalling, and Tiernan?

15 A A very incomplete reference list, sir.

16 Q Doctor, my question is: Do they not cite these as
17 sources for their work? And, Doctor, did you say that they
18 left somebody out?

19 A Yes, I believe that they have left Otto Hutzinger
20 out. Hutzinger has made a study of TCDD and--

21 Q Doctor, Hutzinger is there. Did you say they left
22 out Rappe?

23 A Well, he's in there--

24 Q Hutzinger's in there a couple of times; is he not?

1 A Yes, but they left out his--

2 Q Excuse me, Doctor--

3 A They left out his reference to coal, sir.

4 Q Doctor, do they discuss Hutzinger's work on the
5 page numbered 98? Do they cite it as a reference or book
6 they edited, sir?

7 A They cite it--they cite only the incinerator
8 reference, but they don't cite his coal.

9 Q Doctor, they cite the book; do they not, sir?

10 A Yes, sir, they cite the book.

11 Q And, Doctor, the book deals with chlorinated
12 dioxins and related compounds' impact on the environ-
13 ment; does it not, sir?

14 A That's quite true, sir.

15 Q And, Doctor, they also have an article written by
16 Hutzinger in 1983, "Formation and fate of PCDD and PCDF
17 from combustion processes" printed in Chemosphere?

18 A They do, sir.

19 Q And, Doctor, would not that--and did not that
20 article include a discussion of whether or not TCDDs or
21 PCDDs are formed in the combustion of coal?

22 A That article did, but they don't quote it.

23 A Excuse me, Doctor. My question is: Do they not
24 review and have they not cited as references these articles

1 that you said a moment ago they didn't cite?

2 A Well, they didn't cite his--

3 Q Excuse me, Doctor. Would you answer my question,
4 please?

5 A Yes, I will.

6 Q Do they not refer to these articles?

7 A The references are there, yes.

8 Q Doctor, do they not also refer to articles by
9 Buser and Rappe?

10 A Yes, sir, they do, sir.

11 Q All right. Now, Doctor, back to the question I
12 was asking you, sir. The--

13 THE COURT: Doctor, this isn't a joke.

14 THE WITNESS: Yes, sir.

15 THE COURT: Please treat it with some respect.

16 THE WITNESS: I'm sorry.

17 THE COURT: Go ahead, Mr. Carr.

18 Q Doctor, they conclude--

19 MR. HEINEMAN: Excuse me. Your Honor, may
20 Counsel approach the bench?

21 THE COURT: Yes, you may.

22 (The following proceedings were had out of the
23 hearing and in the presence of the jury.)

24 MR. HEINEMAN: Your Honor, I object to that

1 statement you just made to the witness. If the witness
2 wants to smile or laugh, he certainly has that right. And
3 I may disagree with you as to whether this is a joke, and
4 the witness may too, and I think that goes entirely beyond
5 the province of this Court. And again, your Honor, your
6 are giving--you are lending importance to what Mr. Carr is
7 doing on behalf of the plaintiffs and you are influencing
8 the jury in that respect.

9 THE COURT: That is completely baseless, and that
10 is completely opposite. This witness throughout the after-
11 noon has been laughing and chuckling at questions. He has
12 been laughing and chuckling at exchanges. He has been
13 treating this like a joke which is what he's trying to make
14 it turn into by his disobedience of this Court's orders. I
15 have the right to see that the decor of this court is
16 properly observed to the extent that it is possible with
17 Counsel and witnesses and this point in time. And the way
18 that I chose to do it at this point in time is entirely
19 proper and in no way affects either of your parties as far
20 as that is concerned.

21 MR. CARR: Your Honor, may I also state for the
22 record that there is more than one way of communicating to
23 a jury. You can communicate by the facial expression, you
24 can communicate by shaking your head, you can communicate

1 by laughing, none of which appears in the record, none of
2 which can be seen by the Appellate Court, and which can
3 communicate strongly. He can say "yes" with his mouth that
4 appears in the record and shake his head no. He can give a
5 response that appears to be in the record an appropriate
6 response but then laugh at it to the jury and communicate
7 to the jury that he thinks it's ridiculous. It is a form
8 of communication that he has undertaken a number of times,
9 not just in this instance, but a number of times, to negate
10 the effect of the cross examination, to negate this sworn
11 answer he gives. He is a communicator and has been commun-
12 icating. And I beg the Court to continue to restrain the
13 man from improperly communicating to the jury outside of
14 the record of the courtroom.

15 MR. HEINEMAN: Your Honor, if Mr. Carr observes
16 something that he disagrees with, then he can ask the
17 witness about it. What I'm objecting--

18 MR. CARR: I didn't observe it; I was reading the
19 document.

20 MR. HEINEMAN: Well, excuse me, I'm sorry you
21 were not observant. What I am saying, your Honor, is you
22 took it upon yourself, Judge, to do this without any
23 question, without any request--

24 THE COURT: I most certainly did.

1 MR. HEINEMAN: And I might note for the Court
2 that you sure didn't do that when Dr. Carnow was being
3 examined. And I object to what you're doing now.

4 THE COURT: Dr. Carnow did not do what this
5 witness did.

6 MR. HEINEMAN: Oh, he did it all the time.

7 THE COURT: Now, you don't interrupt me. Dr.
8 Carnow did not do what this witness is doing in that kind
9 of a joking, that kind of a laughing. When there was
10 laughter when he was on the stand, it was because of a
11 mutual joke of things that happened in the courtroom, a
12 couple of which were at my expense, and I laughed as well
13 as anyone else did. That type of laugh is a disrespectful
14 and contemptuous type, and I don't have to tolerate it,
15 whether any of you gentlemen choose to bring it to my
16 attention or not. If I observe it, I can do something
17 about it, whether either of you gentlemen, both of you
18 gentlemen, or neither of you gentlemen ask me to do
19 something about it. I note that it's about eight minutes
20 to. I think we will break at this point in time. We'll
21 take a couple minutes' break and then we will finish the
22 discussion we were having before in chambers.

23 MR. CARR: Okay, fine.

24 (The Following proceedings were had in the

1 hearing and presence of the jury.)

2 THE COURT: Ladies and gentlemen, we are going to
3 end for the day at this point in time. I would remind you
4 in this weekend break that you are not to read, listen to,
5 or watch anything about this case in particular or the
6 subject matter in general in any of the media, print, or
7 electronic. We'll start again at 9:30 Monday morning.
8 Have a good safe weekend. Court is adjourned.

9 (The following proceedings were had in chambers
10 out of the hearing and presence of the jury at 5 p.m.)

11 THE COURT: All right.

12 MR. CRAVEN: Judge, we are back on the question
13 of interrupting--

14 THE COURT: Right. Had you finished your
15 presentation?

16 MR. CARR: Yes. I had finished, I thought.

17 MR. CRAVEN: I had assumed so.

18 MR. CARR: Yes. And I thought you had started
19 already. Maybe not.

20 MR. CRAVEN: No, I hadn't started. We are
21 prepared to furnish if the Court thinks it's necessary, a
22 certificate from a doctor saying that it is unwise with
23 someone who is 73 years old and has a heart condition to
24 undergo this kind of stress. One only has to sit and

1 listen to something that happened in this courtroom this
2 afternoon. It is just clear stalling having this witness
3 sit there and read exhibits, "Doesn't it say this?" and
4 "Doesn't it say that?" That's been going on for days that
5 I've witnessed. This is just holding a witness hostage
6 trying to make him comply with Mr. Carr's absolute precon-
7 ceived notion that everyone has to use his same kind of
8 words. This is just more than this witness can endure, and
9 we want this witness excused from the stand, and he will
10 come back and Mr. Carr can resume his cross examination.
11 But, we want him excused as of today and start with some-
12 thing else Monday. We have the request for voir dire, and
13 I have some kind of confidence that it will be allowed; and
14 we could spend Monday on voir dire of witnesses, Tuesday is
15 no court, and we have a witness ready to come in on Wednes-
16 day. And I have to say I've been back here a lot on
17 Motions. The only time we've ever gotten anything is when
18 Mr. Carr agrees. We can disagree, and he wins. And,
19 Judge, I have been down here on I don't know how many
20 times, and I have heard one objection by Mr. Heineman or
21 Mr. Musgrave sustained. I almost fell out of the chair
22 yesterday when one was sustained. And we are in that kind
23 of a thing. But, I'm telling this Court that this witness
24 is exhausted. I'm telling this Court that Mr. Carr is

1 abusing this witness, and no fair reading of the transcript
2 or more appropriately no fair listening to the tape will
3 tell any fair-minded person that he's doing anything and
4 everything that he can to harass, intimidate, and abuse
5 this witness. And the witness has to have a break. He
6 simply has to have a break. And I'm also suggesting that
7 we shouldn't have to go running up to reviewing courts
8 asking for some kind of relief in these kind of indica-
9 tions when there is a compelling need for this kind of
10 relief on the witness. We also have to prepare, and Mr.
11 Carr is always saying he doesn't have time, but we have to
12 prepare the affidavits that--Mr. Heineman and Mr. Mus-
13 grave--with reference to the matter that developed last
14 night which we consider to be very serious. You said you
15 were going to consider it as a Motion to Re-examine that.
16 I think the Court is going to want to give that some very
17 serious attention, and we need a few days to do that, so
18 does Mr. Carr. That's a compelling matter of interest to
19 all of us, and yet you are forcing us to go ahead with a
20 trial with a juror with a situation where we think there
21 are very serious impediments to this kind of procedure.

22 THE COURT: I don't want to reargue that Motion.

23 MR. CRAVEN: I know. I'm just saying what we an
24 do with the time.

1 THE COURT: Okay.

2 MR. CRAVEN: It seems to me that we are entitled
3 to a break. We are entitled to let this witness take some
4 time off and recuperate and get out from under this kind
5 of stress. Now, who wants the responsibility of this kind
6 of pounding of a witness for this--we would be going on--
7 the 10th of April starts his third month. And that's just
8 unbelievable. And I can't believe that Rex is opposing it,
9 but he is opposing it.

10 MR. CARR: Believe it.

11 MR. CRAVEN: And I understand his batting
12 average. But, I'm suggesting this is one we want to win.
13 And I'm suggesting we want this witness to get some rest.
14 And I'm suggesting that not to do so is a clear abuse of
15 discretion.

16 MR. CARR: If I might respond to the remarks of
17 Counsel. There's about three subjects that he touched upon
18 rather than the one the Court asked for, and I'm con-
19 strained to respond to at least one of them if not all
20 three. His suggestion that this Court has been sustaining
21 my objections and overruling their objections implies that
22 this Court is not acting in a judicial and fairhanded and
23 fair manner, and quite frankly, I think that's a serious
24 charge--implication--on the part of Judge Craven to make

1 about this Court, because the clear implication is there,
2 and he's put it there because he contemplates apparently
3 this record to go up on another supervised order, and he
4 put it there for a purpose something like Gobles, I
5 suppose. If you make a charge often enough and strong
6 enough and loudly enough, you'll find people that will
7 believe it. And that's apparently what he's operating on.
8 Or perhaps it could be because of ignorance, because he has
9 not been in a courtroom defending a lawsuit before and
10 perhaps he hasn't tried many cases and that he's speaking
11 from ignorance. If he is, I'll forgive him.

12 MR. CRAVEN: I'm going to interrupt you.

13 MR. CARR: I'll forgive you of that.

14 MR. CRAVEN: May I interrupt just a minute? Just
15 a minute, please.

16 THE COURT: You'll get your chance; just a
17 minute.

18 MR. CARR: A tactic that is developed to a
19 skill--to a fine skill--by defense lawyers, because they are
20 interested in a reversal--always a reversal---is to make
21 objections, outlandish objections, that are not based upon
22 any law or any evidence or any logic or reason, whereas the
23 plaintiffs' lawyers, who know that this record is going to
24 be scrutinized by Appellate judges and by Supreme Court

1 judges, refrained from making objections that are not
2 proper and cannot be sustained appropriately. And that
3 happens to be the way plaintiffs and defendants try cases.
4 Defendants try cases hoping that the Judge will erroneously
5 overrule one of their objections and thus make a record for
6 reversal. This is standard operating procedure. It has
7 been the operating procedure of Counsel in this case in my
8 judgment. And it would be assinine for me to spend two
9 years in a case and take positions that I knew would be
10 reversible error. It would be stupid for this Court to
11 take two years in this case--because we know for a certain-
12 ty this case is going on appeal; we know that from what
13 they have said here and in the past elsewhere. We know
14 that for a certainty. Neither this Court nor plaintiff's
15 Counsel, I think, are of a mind to do stupid things and go
16 on for two years for no end, for it to be a reversal.
17 There's no doubt in my mind but what this Court has
18 overruled objections when it's believed it's proper to do
19 so. There's no doubt in my mind that I know that I have
20 never made an objection that I thought would be reversible
21 error for the Court to sustain. And I never opposed
22 objections of Counsel on the other side where I believed to
23 do so would cause the Court to commit reversible error.
24 I'm trying this case in the best way I know how to prevent

1 reversible error. And I think the charge that Judge Craven
2 has made is either, as I've said before--well, I think it's
3 from ignorance. He doesn't know any better. But, that's
4 the way these lawsuits are tried. Now, on the statement
5 about "Well, he hasn't won any, and therefore he sure wants
6 to win this one", that is a ploy and I hope it won't
7 influence the Court, designed to say, "Okay, I'll throw you
8 something." No, this Court should rule for the request of
9 Counsel if he believes it's proper and appropriate to do
10 so. But, he should not rule for Counsel simply because,
11 "We haven't had something in a long time, please give us
12 something." This Court should in my judgment and has in my
13 judgment ruled on the merits of each Motion made and each
14 objection made, and I hope the Court will continue to do
15 so. Now, on the merits of this particular matter. They
16 have said they will furnish an affidavit signed by a doctor
17 that stress is bad for somebody with a heart attack--or a
18 heart condition. There's no need for such an affidavit;
19 everyone knows that stress is bad for people with a heart
20 condition. We don't know that this particular witness has
21 a heart condition. I haven't heard from his doctor that
22 the man is unable to sustain the cross examination. They
23 brought him forward representing to the Court that he would
24 be able to withstand this cross examination. He underwent

1 weeks of examination in Nitro, West Virginia and didn't ask
2 for a recess to my knowledge.

3 MR. NASSIF: Two weeks.

4 MR. CARR: Well, two weeks. And it's more than
5 two weeks, Counsel. I've got a stack of transcripts from
6 it. But, nevertheless, he didn't ask for any recess there,
7 and I haven't heard the witness say that he's unable to
8 take further cross examination and needs an excuse for
9 medical reasons. I haven't seen an affidavit from his
10 treating doctor that says he is unable to continue Monday
11 for medical reasons. While the implication is there that
12 they can get an affidavit from a doctor that stress is bad
13 for somebody with a heart condition, we'll concede the
14 point. But, we haven't heard yet that that's any medical
15 reason to apply to this witness. This witness has got the
16 entire weekend to rest. He'll be back one day Monday and
17 then he'll have another day to rest and then he'll have
18 three days to continue on. Certainly whatever recoupera-
19 tive powers he's got can come into play in the two days for
20 this weekend and one day next Tuesday. If at the end of
21 next week it should appear that he needs an extra day, I
22 don't oppose recessing for another day if he needs it--and
23 I don't think he needs it. But, I absolutely oppose taking
24 this witness off the stand and putting another witness on

1 in his place. We agreed to have this witness go off the
2 stand for his reasons that he had to fly here or fly there
3 or do this seminar or do that. We agreed to that. We will
4 certainly not agree to taking another witness on in his
5 stead next week or at any time in the future. I have a
6 forecertainty that if he comes back at some later date, I
7 will have to re-establish everything that I have with great
8 difficulty established to date, and it would be an inordi-
9 nate waste of judicial time so to do as well as probably
10 interrupt the next witness on cross examination for him to
11 come back. So, absolutely, I oppose any kind of recess as
12 suggested by Counsel.

13 MR. CRAVEN: It's said that he God would
14 destroy they first make man; but, the analogy to Gobles is
15 not fitting you Rex; and even an argument of that kind of
16 misuse of anything is demeaning to what I thought you were.
17 I resent it. I reject it. And I think you can have it
18 back. And for him to use that kind of thing even under
19 those circumstances I find absolutely unprofessional, and I
20 would like it stricken from the record and I would hope
21 that he would apologize. That's just outrageous, absolute-
22 ly outrageous; but typical of what he's doing in this
23 trial; typical of the way he's abusing the judicial
24 process. And for him to talk about Gobles and then sit