

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

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

Before the HON. RICHARD P. GOLDENHERSH, Judge

REPORT OF PROCEEDINGS

JURY TRIAL

March 24, 1986

APPEARANCES:

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

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

MARSHA SCHNIPPER
Official Court Reporter

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EXHIBITS

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EXHIBITS SUBMITTED ON BEHALF OF THE PLAINTIFFS:

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1 BE IT REMEMBERED AND CERTIFIED that heretofore, on
2 to-wit: March 24, 1986, being one of the regular judicial
3 days of this Court, the matter as hereinbefore set forth came
4 on for hearing before the Honorable Richard P. Goldenhersh, a
5 Judge in and for the Twentieth Judicial Circuit of the State
6 of Illinois, Belleville, St. Clair County, Illinois, and the
7 following was had of record, to-wit:

8
9 * * * * *

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

12
13 RAYMOND R. SUSKIND

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

16 CROSS EXAMINATION

17 BY MR. CARR:

18 Q. Dr. Suskind, we were discussing Mr. Willard and
19 some of these other workers at Nitro at our conclusion of the
20 court day Friday and Dr. Nessman's reports relating to these
21 men. Now, his report on Paul Willard, I think we established
22 is dated in May of 1953, that's Plaintiffs' Exhibit 1783. Do
23 you have that in front of you, sir, or have all those
24 exhibits been taken? You do have those?

1 A. Yes, I do, sir.

2 Q. It does bear the date of May 4, 1953, does it not,
3 sir? You see there right at the top of the page, Doctor.

4 A. Yes, I believe so.

5 Q. And you made your -- you and your associates made
6 your report also in '53, did you not? You examined in 1953
7 and reported a short time thereafter?

8 A. Yes.

9 Q. And he would have your report available to him in
10 between 1953 and 1956 when he appeared before the commission
11 subsequently, would he not, sir?

12 A. I don't know, sir.

13 Q. Well, if he's examining for Monsanto, if Monsanto
14 wanted him to be advised of the things that you put in your
15 report, they would have given him that report, would they
16 not?

17 A. Sir, I really don't know whether or not he got the
18 1953 report.

19 Q. Doctor, I understand you don't know. You said
20 that, but I'm asking you another question, Dr. Suskind. Do
21 you conceive that I'm asking you another question?

22 A. I thought you were asking me that question.

23 Q. I'm asking you, Doctor, if Monsanto wanted to make
24 that report available to their doctor, Dr. Nestmann, they

1 would have done so, would they not, sir?

2 A. If they wanted to, yes.

3 Q. Yes. And, Doctor, we've also established by your
4 1953 report that none of these men had any problems of
5 psychoneurosis or nervousness according to your report before
6 their exposure, isn't that correct, sir? We've established
7 that Friday and at other times?

8 A. No, I believe there's one instance that I recall
9 that there was reports of nervousness.

10 Q. What instance was that, Doctor?

11 A. This is a medical --

12 Q. If you would --

13 A. A plant medical record of --

14 Q. If you would turn to your report 1701, your 1953
15 report.

16 A. It's not in there, sir, it's in the medical --
17 medical records of the company.

18 Q. Doctor, so far as the records that we have in this
19 case, that we can see and look at here in this courtroom,
20 1701, your review of these men's past histories indicate that
21 none of them had any problem with nervousness before the
22 exposure, isn't that correct?

23 A. No, it's not.

24 Q. Doctor, we established that Friday. Would you turn

1 to Page 4 of Exhibit 1701, sir?

2 A. 1701 is what, sir?

3 Q. That's your 1953 report, sir, on these 36 persons
4 that you examined. Where it discusses --

5 A. I have it here, sir.

6 Q. You see where it discusses pattern of symptoms?

7 A. Umhm.

8 Q. You state there, sir, that these problems all
9 developed subsequent to the exposure, including irritability
10 and nervousness. That statement is on the top of Page 5,
11 starts at the bottom of Page 4.

12 A. Yes, but it doesn't say anything about whether or
13 not they had it before, sir, it doesn't.

14 Q. Doctor, are you answering my question?

15 A. I am indeed.

16 Q. Doctor, insofar as your record states, it says all
17 of these symptoms developed after the exposure, does it not,
18 sir?

19 A. Where?

20 Q. The first sentence in the paragraph numbered two on
21 Page 4 entitled pattern of symptoms. From the histories that
22 were obtained all the cutaneous symptoms except one developed
23 prior to the other -- cutaneous symptoms developed prior to
24 the other symptoms?

1 A. That's what it says, sir, but that has nothing to
2 do with your question.

3 Q. Doctor, if you will just bear with me for a
4 moment. It says that, does it not?

5 A. Sure, it does.

6 Q. And, Doctor, it says, therefore, that the chloracne
7 symptoms developed before these other symptoms, isn't that
8 correct?

9 A. That's all it says, sir.

10 Q. All right. Now, Doctor, if the chloracne symptoms
11 developed after the exposure, did it not, sir?

12 A. Indeed.

13 Q. Then all the other symptoms developed after the
14 chloracne, didn't they, sir?

15 A. Those that we're talking about here, sir, yes.

16 Q. Yes, that's what we're talking about, sir. All
17 these other symptoms developed after the exposure, therefore,
18 did they not, sir?

19 A. From this report, sir.

20 Q. Yes. And that's what I'm discussing, Dr. Suskind.

21 A. No, you --

22 Q. Crystal clear is this report, sir, is what I am
23 discussing. Please confine your answer to this report, Dr.
24 Suskind. Would you do that, sir?

1 A. If you ask me to, sir.

2 Q. Dr. Suskind, I been asking you to for ten minutes,
3 I have been directing your attention to this report. My
4 question is referring to this report. This report states,
5 does it not, sir, that all of these symptoms developed after
6 the chloracne symptoms?

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

9 THE COURT: Yes, you may.

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

12 MR. HEINEMAN: Your Honor, my objection is to Mr.
13 Carr's statement that all he's been talking about has been
14 the witness' report. He originally asked the doctor if all
15 of the symptoms that any of these people had developed after
16 the exposure. The witness said no. He said what do you have
17 to demonstrate that? The witness said there's a plant
18 medical record. What about that plant medical record, and
19 the witness started to explain it when Mr. Carr interrupted--

20 MR. CARR: You want to talk loud enough so the jury
21 can hear everything you say?

22 MR. HEINEMAN: They can't hear.

23 MR. CARR: They can hear, they can hear you.

24 THE COURT: They can hear you. Keep your voice

1 down.

2 MR. HEINEMAN: May I finish? Do you mind?

3 MR. CARR: I mind indeed you talking loud enough so
4 the jury can hear you. They can hear. *

5 THE COURT: Keep your voice down.

6 MR. HEINEMAN: I will keep my voice down. So he
7 said, the witness was talking about the plant medical
8 record. Mr. Carr interrupted him and began talking about the
9 witness, because obviously Mr. Carr didn't want to hear about
10 the plant medical record, and now he's saying this is all
11 he's ever been asking the witness about, and that's simply
12 not true, and I object to it. He interrupted the prior
13 answers as he does all the time, and now he's trying to lead
14 the witness away from the plant medical record, which the
15 witness wants to talk about.

16 MR. CARR: The witness does not have the right to
17 talk about something that I'm not asking him about. I
18 directed his attention a number of times to this exhibit. I
19 said clearly I want to talk about this exhibit, about what
20 was reported here in this exhibit. It's clear and counsel
21 knows it.

22 THE COURT: Objection is overruled.

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

24 Q. Doctor, according to this report of yours in 1953

1 it states, does it not, sir, from the histories obtained from
2 these workers that these other problems developed after the
3 chloracne, these other symptoms developed after the
4 chloracne?

5 A. No, sir.

6 Q. Are you confining your analysis to this document,
7 sir?

8 A. I am, sir.

9 Q. What symptoms developed prior to the chloracne,
10 sir?

11 A. I'm not sure I understand the question of other
12 symptoms, sir.

13 Q. Doctor, my question was all of these symptoms
14 reported here by history developed after the chloracne, did
15 they not, sir?

16 A. That isn't how it's stated, sir.

17 Q. Doctor, could you answer my question please.

18 A. No, sir.

19 Q. Are you saying then that some of these symptoms
20 developed before the chloracne?

21 A. They might have.

22 Q. Now, Doctor, according to this report which ones
23 developed before the chloracne or which ones developed before
24 the exposure according to this report?

1 A. I can't tell you, sir.

2 Q. Doctor, you can tell me because it says here from
3 the histories which were obtained from the 36 workers
4 surveyed it was apparent that the cutaneous symptoms in all
5 except one developed prior to the other symptoms, does it not
6 say that, sir?

7 A. That's what it says, sir, and that's the logic of
8 that sentence.

9 Q. And, Doctor, the one they're referring to is Mr.
10 Kyle, who did not have cutaneous symptoms, isn't that
11 correct, sir?

12 A. No, he didn't have chloracne, sir.

13 Q. My question is that's the one they're referring to
14 when they say the cutaneous symptoms in all except one
15 developed prior to the other symptoms?

16 A. Yes, I believe that's what we are saying, sir.

17 Q. Doctor, then it goes on to say at the bottom of the
18 page from several weeks to two years after the cutaneous
19 problem became apparent other complaints which developed
20 included severe aches, so forth, so on, excessive fatigue
21 irritability and nervousness and decrease in libido and so
22 forth, isn't that correct, sir?

23 A. That's what it says in this report, sir.

24 Q. And, Doctor, does it not say in this report that

1 the irritability and nervousness was a complaint that
2 developed after the cutaneous problem became apparent?

3 A. In this report, sir, yes.

4 Q. Yes, Doctor, you know this is the report we're
5 talking about. I'm glad you're emphasizing it, because this
6 is the report we're talking about, isn't it, sir?

7 A. Yes, I need to emphasize it, sir.

8 Q. Doctor, now according to this report the
9 irritability and nervousness developed then after the
10 exposure, did it not, sir?

11 A. Only according to this report, sir, yes.

12 Q. You're sure you got that in there now, right, Dr.
13 Suskind?

14 A. Yes, I do indeed.

15 Q. According to this report. Now, Doctor, and this
16 report was available to Dr. Nestmann if the company wanted
17 him to have it, isn't that correct, sir, so far as you know?

18 A. I don't know if it was available or not, sir.

19 Q. Doctor, if you were an examining physician for a
20 company, you would want to have made available to you a
21 report such as this sort made by the Kettering Laboratory and
22 its experts in this area?

23 A. I might, it all depends upon whose report it was.

24 Q. You don't think you would, sir?

1 A. No, it all depends on whose report it was.

2 Q. If Monsanto wanted Dr. Nestmann to have it, I think
3 we've already established they could have given it to him,
4 correct, sir?

5 A. Yes.

6 Q. Doctor, he would have known in the case of Paul
7 Willard, would he not, sir, as we've established prior --
8 last week that he had no complaints of nervousness so far as
9 these records are concerned that existed before this
10 accident, wouldn't he, sir?

11 A. If he had this report, sir, yes.

12 Q. As a matter of fact, I think as we've established,
13 Dr. Nestmann in talking about the psychoneurosis was talking
14 about the materials of this so-called explosion and the fact
15 that Mr. Willard was exposed to these products, correct,
16 sir? Is that correct, sir?

17 A. I haven't located it in the letter of May 4.

18 Q. Doctor, it's what you testified to Friday. You
19 told us what Dr. Nestmann meant what you interpreted his
20 report to mean, sir? Do you recall that, sir, just right
21 before the lunch break?

22 MR. HEINEMAN: Objection, Your Honor. May counsel
23 approach the bench?

24 THE COURT: Sure.

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

3 THE COURT: You need to get over here please.

4 MR. HEINEMAN: Why do I have to face that way?

5 THE COURT: Because you are a big man, you've got a
6 loud voice. I know you've been trying to speak less loudly,
7 but you still do speak loudly, and I prefer to have you
8 facing me rather than the jury when you make an objection.
9 Turn around over here.

10 MR. HEINEMAN: Over here?

11 THE COURT: Yes, please.

12 MR. HEINEMAN: Your Honor, I'm objecting to this
13 statement. As usual Mr. Carr is misleading the witness by
14 misrepresenting what his prior testimony was. The witness
15 testified yesterday or Friday at great length about the fear,
16 the combat fatigue, fear being the cause of the
17 psychoneurosis. He never ever said that Dr. Nestmann said
18 that only the materials were the cause of the
19 psychoneurosis. He never said the materials were the cause
20 of the psychoneurosis, and, therefore, that's an absolute
21 misstatement of the witness' testimony, and I object to it.

22 THE COURT: Mr. Carr?

23 MR. CARR: The record is clear, Your Honor. He
24 said he was talking about the results of the incident, which

1 included exposure to the material.

2 THE COURT: Objection is overruled.

3 MR. HEINEMAN: Excuse me, Your Honor, would you
4 like to see the rest of it that Mr. Carr didn't show you?

5 THE COURT: Sure.

6 MR. HEINEMAN: Let me show you the rest of it.

7 THE COURT: Sure.

8 MR. HEINEMAN: He talks about --

9 THE COURT: I'll read it.

10 MR. CARR: You have your back to me. I can't hear
11 you.

12 MR. HEINEMAN: I'm terribly sorry. The witness goes
13 on to say that he's not talking about the cause, the man says
14 nothing about cause.

15 THE COURT: Let me read it. Objection is
16 overruled.

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

18 MR. CARR: Would you read my last question please.

19 (Court reporter read back the last question.)

20 Q. Do you recall it, Dr. Suskind?

21 A. Yes, I recall what I said, sir, yes.

22 Q. And what you said there in discussing Dr.

23 Nestmann's diagnosis of psychoneurosis, you said he's talking
24 about the results of that incident, he's talking about, and

1 he knew what he was talking about, he knew that he was
2 talking about the materials of that so-called explosion, and
3 Mr. Willard was exposed to the products of that runaway
4 reaction, and that is what Dr. -- what Nestmann is likely to
5 mean and also the fear, the combat fatigue and so forth.
6 Now, do you recall that being your answer, Doctor?

7 A. Yes, I recall that as my answer, but it's
8 incomplete.

9 Q. Now, Doctor -- Doctor, the -- Mr. Willard was
10 exposed to the material, the products of this runaway
11 reaction, and these other men were as well, were they not,
12 sir, that we're discussing?

13 A. They were.

14 Q. And if his psychoneurosis was according to Nestmann
15 the result of the materials -- of Mr. Willard being exposed
16 to the products of that runaway reaction and also the fear
17 that he equated to combat fatigue, he would also know that it
18 could be logical and likely that psychoneuroses in these
19 other men that he found it to be in could well be the product
20 of the same factors, isn't that correct, sir?

21 A. No, sir.

22 Q. That isn't correct?

23 A. No, sir.

24 Q. Doctor, is there something -- psychoneurosis in one

1 person if it's caused by exposure to the products of an
2 explosion or a reaction, it could cause psychoneurosis in
3 another person, could it not, sir?

4 A. No, sir.

5 Q. Doctor, if the contaminant or the 2,4,5-T or the
6 two combined or TCP or whatever it is can cause, if exposure
7 to the materials can cause psychoneuroses in one, surely it
8 can cause psychoneurosis in two, can it not, sir?

9 A. No, sir.

10 Q. Or three, isn't that correct, sir?

11 A. No, sir.

12 Q. Doctor, the products of the explosion can cause
13 chloracne in one, can it not, sir?

14 A. Yes, sir.

15 Q. It can cause chloracne in two, can it not, sir?

16 A. Yes, sir.

17 Q. Now, the products of the explosion can cause muscle
18 aches and pains in one, can it not, sir?

19 A. Might.

20 Q. It can, can it not?

21 A. Yes, sir.

22 Q. It can cause it then in two persons, can it not,
23 sir, or three or four?

24 A. Yes.

1 Q. Loss of libido can be caused by exposure to
2 materials in one person, it can be caused then the loss of
3 libido in one or more persons, couldn't it, sir?

4 A. No.

5 Q. It could not?

6 A. No.

7 Q. Doctor, why would loss of libido be caused by
8 products of the explosion in one person and not be the cause
9 of the loss of libido in others?

10 A. Because as we have discussed previously, Mr. Carr,
11 loss of libido in these men could have been caused by many
12 things, and I can enumerate them. They might have been
13 caused, one might have been caused by or related to or
14 associated with the products of this --

15 Q. Dr. Suskind, that's what I'm talking about.

16 A. May I finish, sir, I have not finished.

17 Q. Doctor, that's what I'm talking about.

18 A. Mr. Carr, I have not finished.

19 MR. CARR: Your Honor--

20 THE COURT: Doctor--

21 MR. HEINEMAN: I object.

22 THE COURT: Objection is overruled. Let Mr. Carr ask
23 his question.

24 Q. Doctor, he has to get on the same wave length. I'm

1 talking about if it can cause it in one person, as you said
2 that it can cause, can it not then do the same thing in other
3 persons?

4 A. No, sir, my answer was no, and I explained it,
5 because there are a hundred and one different things that can
6 cause loss of libido and we have discussed this previously,
7 and you are simply manipulating my answers to get the kind of
8 answer that you want.

9 Q. Doctor, how am I manipulating your answer? Did you
10 say that the loss of libido can be caused by TCDD?

11 A. It may be associated with it.

12 Q. All right. And associated is it's caused by, it
13 goes with, isn't that what you mean by associated?

14 A. Umhm.

15 Q. Doctor, if it can be caused by or associated, it
16 can cause that in one person, it can surely cause it in more
17 than one person, can't it, sir?

18 A. My answer there was no, and I'll stick by that
19 answer.

20 Q. Then which of these--

21 A. Because there are multiple causes, sir.

22 Q. All right. Doctor, which of these persons that had
23 loss of libido had the loss of libido caused by the
24 contaminant in your judgment or associated with the

1 contaminant?

2 A. I haven't counted them, sir.

3 Q. Doctor, you have said in your report here that loss
4 of libido was one -- in 13 persons here was associated with
5 this exposure, did you not, sir? On Page 5, sir.

6 A. Those were the symptoms, but I didn't say that they
7 were associated with this exposure, sir.

8 Q. Doctor--

9 A. This is a -- let me finish. This is a list of
10 symptoms.

11 Q. Yes?

12 A. And among the 13 there could have been any number
13 of them whose loss of libido might have been due to a
14 prostate or other types of things which cause loss of libido.

15 Q. I understand that.

16 A. Including social problems.

17 Q. Doctor, we're not quarrelling with that.

18 A. Yes, you are.

19 Q. We're in agreement that there are other causes of
20 loss of libido other than TCDD. I'm not suggesting that TCDD
21 -- did you-- maybe that's where we have the breakdown.

22 A. I think so, sir.

23 Q. Did you think that I meant that TCDD is the only
24 thing that can cause loss of libido?

1 A. You are relating the 13.

2 Q. Doctor, did you think I meant that, sir?

3 A. No, sir.

4 Q. All right, Doctor. I agree there are a lot of
5 things that can cause loss of libido, but one of those
6 multiple things that can cause loss of libido is TCDD, isn't
7 that correct, sir?

8 A. It might, sir, yes.

9 Q. All right. If it can do it in one person, it can do
10 it in other persons can't it, sir?

11 A. My answer there was no --

12 Q. Doctor, if it is a cause of a loss of libido, and
13 you said that it is, that it might be, it might also be the
14 cause of loss of libido in other persons who have been
15 exposed to TCDD. Not necessarily, Doctor, because one of
16 those persons could be having a big quarrel with his wife or
17 could be having a traumatic association elsewhere or could be
18 having some kind of disease. I'm not suggesting that in all
19 13 of these persons, sir, that absolute for certainty TCDD
20 caused their loss of libido, and that's where we have the
21 breakdown.

22 A. Yes, sir.

23 Q. I'm not suggesting that, Doctor. Did you think I
24 was suggesting that?

1 A. Yes, I did, sir.

2 Q. All right. Now, Doctor, my question is simply
3 this, sir. If there is -- if a product can cause a given
4 result in one person, that product, having the capability to
5 cause that in one person could cause it in other persons,
6 couldn't it, sir?

7 A. With the explanation that you've given me, yes,
8 sir.

9 Q. Surely. And, Doctor, the same thing is true about
10 psychoneuroses. If the product can cause a psychoneurosis in
11 one person, then it's capable of causing it in others
12 although there may be other causes as well, but if it can
13 cause it in one person, it can cause it in others, correct,
14 sir?

15 A. No, sir.

16 Q. Sir?

17 A. No, sir.

18 Q. Why is it, Doctor, that you agree that TCDD can be
19 the cause of a loss of libido in more than one person as you
20 have agreed, but that the TCDD cannot be the cause of a
21 psychoneurosis in more than one person?

22 A. The answer is very simple, sir.

23 Q. All right. Please give us that answer.

24 A. We have not established in this court via my

44
1 testimony or Dr. Nestmann's that TCDD is responsible for or
2 associated with psychoneurosis.

3 Q. Doctor, you're not accepting the premise then. You
4 see you're saying that we haven't proved the cause, and I
5 thought that's what you were trying to do?

6 A. No.

7 Q. Doctor, understand this. I said if it is the
8 cause.

9 A. No, you didn't.

10 Q. Oh, yes, I did, Doctor. If it can cause it in one
11 person, it can cause it more than one. Did you hear the word
12 if? The word if is in there, Doctor.

13 A. We haven't established that though.

14 Q. Doctor, my question is if. Did you hear me? If, if
15 it can cause it in one person, will you accept the
16 assumption, Doctor, that I'm giving you an if. I know you
17 don't want to say that it's caused it in anybody, I know you
18 don't want to say that the cause of a loss of libido or the
19 aches and the pains or anything, I know you don't want to say
20 those things, Doctor, I appreciate that.

21 A. I will say it if they're true, sir.

22 MR. HEINEMAN: Objection, Your Honor. May counsel
23 approach the bench?

24 THE COURT: Yes, you may.

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

3 MR. HEINEMAN: There is no proof in this courtroom,
4 Your Honor, that dioxin can cause psychoneurosis, and,
5 therefore, it cannot be something that he asks this witness
6 to assume. He can't ask him to assume a fact that has not
7 been testified to or proven in the courtroom, and that has
8 not been proven. I object to it. He also just said --

9 THE COURT: One at a time.

10 MR. CARR: There's plenty of proof. Dr. Nestmann
11 just got through saying, and he interpreted Dr. Nestmann's
12 report as saying that the psychoneurosis can be the result,
13 is the result of the incident in question of exposure to
14 materials. In addition to that, Dr. Carnow and others have
15 testified that it is a central nervous system -- can cause
16 severe psychoneurosis.

17 THE COURT: What is your next objection?

18 MR. HEINEMAN: First of all, that's again a
19 misrepresentation of the witness' testimony. This Court read
20 the part of the testimony that said that -- where he denied
21 the cause, causation.

22 THE COURT: Let me clarify that. I did read the
23 whole section, and as this witness has commonly done, he
24 first said what Mr. Carr said he said, and then he proceeded

1 to back track and say what you said to deny, but the jury had
2 heard both. There is -- between that and Dr. Carnow's
3 testimony I think there is evidence in the record, so your
4 objection, your first objection is overruled. I asked you
5 this whether or not you had another objection.

6 MR. HEINEMAN: My second objection is he just said
7 to the witness about what he knows he doesn't want to say,
8 and he doesn't want to say, and one of the things he said he
9 doesn't want to say is that muscle pains were caused by TCDD
10 after the witness this morning has just finished testifying
11 that muscle pains can be caused by TCDD. Again, Mr. Carr is
12 twisting, distorting, misleading, misrepresenting the
13 witness' testimony in order to try and score a point with the
14 jury, in order to try and get some sort of admission that he
15 knows is untrue, and I object to it, and I object to the
16 speech in that regard and ask that it be stricken, ask that
17 the jury be instructed to disregard it.

18 MR. CARR: Your Honor, it's clear that the witness
19 started out saying that loss of libido cannot be caused by
20 TCDD, that all these things cannot be caused, other things
21 can cause it. It's clear that he's playing a game, he knows
22 he's playing a game, and I just get so tired of answering
23 counsel's statements when counsel knows that the witness is
24 obviously playing a game.

1 MR. HEINEMAN: Well, the disingenuousness of Mr.
2 Carr's remarks will be clear from the record, Your Honor.

3 THE COURT: Objection is overruled.

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

5 Q. Now, Dr. Suskind, if the psychoneurosis is the
6 result of being exposed to the products of the runaway
7 reaction as Dr. Nestmann -- as you said Dr. Nestmann meant in
8 Mr. Willard, it can be the result of others being exposed to
9 the same material, if what Dr. Nestmann said is correct,
10 isn't that correct, sir?

11 A. No, sir.

12 Q. Are you assuming that what Dr. Nestmann said is
13 correct? Are you assuming that the psychoneurosis is the
14 result of exposure to the products of this reaction, are you
15 assuming that, sir, in Mr. Willard's case?

16 A. No, I'm not assuming it, because that's incomplete.

17 Q. Doctor, assume that--

18 A. That's an incomplete statement.

19 Q. Assume that if you would, sir.

20 A. If you're asking me to assume it, if I will.

21 Q. Yes.

22 MR. HEINEMAN: May I ahve a continuing objection,
23 Your Honor.

24 A. Even if it's in error, which I believe it is.

1 MR. HEINEMAN: May I have a continuing objection,
2 your Honor?

3 THE COURT: Sure.

4 Q. Dr. Suskind, didn't you say that on Friday that
5 that is what Nestmann is likely to mean and also the fear?

6 A. No, I said other things, sir, and you're not
7 reading the whole statement.

8 Q. Doctor--

9 A. I said the circumstances, the circumstances of this
10 situation led to fear, and that's why I have difficulty --

11 Q. Doctor, that's half your answer. Would you like to
12 read the first part of your answer? I read it to you a couple
13 of times. Have you not-- oh, you have -- no, you haven't,
14 here. Right there, Doctor, talking about where it says the
15 result just so you can see that I'm not misreading what you
16 said Friday, sir.

17 A. May I read it out loud?

18 Q. To yourself please, Doctor.

19 A. Well, I think since you have not read --

20 Q. Doctor, have you read it?

21 A. Mr. Carr, you have not --.

22 MR. CARR: Your Honor, would you direct the witness
23 to quit arguing with me?

24 THE COURT: Doctor, if you're asked to read it to

1 yourself, please just read it to yourself. That's a proper
2 request.

3 A. I have, sir.

4 Q. Doctor, you did state, did you not, sir --

5 A. May I see the page number, sir?

6 Q. Doctor, could you please bear with me so that I
7 might finish this examination? Would you do that, Doctor?

8 A. I'll try, sir.

9 Q. If I do indeed misstate anything, Mr. Heineman will
10 correct it. If I do anything wrong, Mr. Heineman has the
11 ability to straighten it out in any way. Now, Doctor, so
12 please bear with me. Did you not say here that Dr. Nestmann
13 is referring to this explosion, he's not talking about the
14 actual incident, he's talking about the results of that
15 incident, did you say that, sir?

16 A. Yes, sir.

17 Q. All right. And when you say he's talking about the
18 results of that incident, we're referring to and you're
19 referring to the psychoneurosis, aren't you, sir?

20 A. No, sir, I am not, sir.

21 Q. Sir, what are the results of that incident if it's
22 not the psychoneurosis, sir?

23 A. No, the results of that incident are the symptoms
24 that these people have, have expressed.

1 Q. Yes.

2 A. And you know as well as I do --

3 Q. And, Doctor, what are the symptoms, sir?

4 A. They were, they were pain, they were first
5 chloracne and then pains and initially some of them had some
6 nervousness, and they had some vertigo and all the things
7 that we have been talking about. Those are the initial
8 symptoms. Those are not psychoneuroses, sir, that is not
9 psychoneurosis, and I have never said in this courtroom, sir,
10 I have never said that.

11 Q. Doctor, I'm not asking you about what you said I'm
12 asking you what Dr. Nestmann said.

13 A. Or what Dr. Nestmann said, yes, sir.

14 Q. All right. Would you read here what you said here.
15 Dr. Nestmann, and you recall we were talking about the
16 psychoneurosis, weren't we, sir, in Dr. Nestmann's report?

17 A. We were talking about his whole report, sir.

18 Q. Doctor, don't you recall we were talking about the
19 psychoneurosis that Dr. Nestmann said that he had, sir, which
20 he said was an -- he has the severe psychoneurosis, number
21 one, and number two, he has chloracne. He's talking about
22 two things, isn't he, sir?

23 A. Umhm.

24 Q. He's talking about chloracne. There's no question

1 about that's the result of the incident, is there, sir?

2 A. Correct.

3 Q. He's talking about severe psychoneurosis, correct,
4 sir, two things he listed?

5 A. Yes, he did.

6 Q. All right. Now, he's saying those two things are
7 the results of this incident, isn't he, sir?

8 A. He relates them to the incident, sir.

9 Q. My question is he's saying that these two things
10 and only these two things, the severe psychoneurosis and the
11 chloracne, that's the only two things he finds that's the
12 result of this incident, isn't that correct, sir?

13 A. He said they are related to the incident, yes, sir.

14 Q. Is that a yes to my question--

15 A. Yes, sir.

16 Q. As I stated it?

17 A. It is, sir.

18 Q. All right. And when you're talking about here, you
19 quote him, he's talking about the results of that incident.
20 Now, what are the results, sir, that he's talking about?

21 A. I asked you not to yell at me, sir, if you don't
22 mind.

23 Q. What are the results that he's talking about,
24 Doctor?

1 A. Would you repeat the question, sir.

2 Q. What are the results that he's talking about, sir,
3 the results of the incident?

4 A. He's talking about the chloracne and the results --

5 Q. And what else, Doctor, what's the other thing he's
6 talking about?

7 A. The psychoneurosis.

8 Q. Yes, the severe psychoneurosis. Correct, sir?

9 A. Correct.

10 Q. Those are the two results of the incident that he's
11 talking about, correct, sir?

12 A. That's what he said.

13 Q. All right. And then you go on to say after you say
14 he's talking about the results of that incident, you then go
15 on to say he's talking about, and he knew what he was talking
16 about, he knew that he was talking about the materials of
17 that so-called explosion. You say that also, don't you, sir?

18 A. Yes, I do.

19 Q. And Mr. Willard was exposed to the products of the
20 runaway reaction. That is what Nestmann is likely to mean.
21 You said that, didn't you, sir?

22 A. Correct.

23 Q. All right. Now, he is saying, you are saying there
24 that he's talking about Willard's exposure to the materials

1 of the so-called explosion, correct, sir, to the runaway
2 reaction. Is there any question about it?

3 A. Among other things, among other things.

4 Q. Let get that established first, Dr. Suskind. Is
5 there any question about that Dr. Nestmann according to your
6 interpretation of the reports said that he was talking about
7 Mr. Willard being exposed to the products of that runaway
8 reaction?

9 A. Correct.

10 Q. And that was -- we're talking again about the
11 severe psychoneurosis, aren't we, Doctor?

12 A. No, we're not, sir.

13 Q. Oh, we lost that somewhere?

14 A. Yes, we did.

15 Q. We're talking now just about chloracne?

16 A. We're talking about the symptoms --

17 Q. Doctor, are we talking about just chloracne? We're
18 talking about two things, we started out talking about two
19 things, the chloracne and the severe psychoneurosis, didn't
20 we, sir?

21 A. We're talking about severe psychoneurosis and
22 chloracne, sir.

23 Q. All right. And we're still talking about that in
24 this paragraph, this sentence that follows where you say he's

1 talking about the results of that incident so we're still,
2 that's still the subject of your answer?

3 A. The result of the incident, right.

4 Q. That's still the subject of your answer, right, sir?

5 A. Correct, sir, yes.

6 Q. All right. He knew what he was talking about, the
7 materials of that so-called explosion, right, sir?

8 A. Correct.

9 Q. You're tying the materials of that explosion to
10 these results, correct, sir, you're interpreting his answer
11 that way?

12 A. Not directly, sir, no, sir.

13 Q. Not directly? Does it follow right after the
14 sentence he's talking about the results of that incident?
15 Does your statement -- does the statement that he was talking
16 about the materials of that so-called explosion and Mr.
17 Willard was exposed to the products of the runaway reaction
18 --

19 A. Correct.

20 Q. That's what Dr. Nestmann is likely to mean?

21 A. Right.

22 Q. Okay. We're talking about Mr. Willard being exposed
23 to these materials, aren't we, sir?

24 A. We are.

1 Q. All right. That's right in there with that results
2 of the incident, aren't we, sir?

3 A. That is --

4 Q. The incident is the exposure of Mr. Willard to thee
5 materials, correct, sir?

6 A. Not necessarily, sir.

7 Q. What is the incident we're talking about?

8 A. The incident is--

9 Q. Isn't that what you said right here, sir?

10 A. May I --

11 Q. Excuse me. Isn't that what you said right here?
12 He's talking--

13 A. That is not how you interpret it though, sir.
14 You're interpreting it.

15 Q. Doctor, I'm not interpreting it.

16 A. Yes, you are.

17 Q. I'm simply reading what you said. The jury is going
18 to interpret it. You say--

19 A. I can interpret it, too, because I stated that, I
20 said it, not you, I said it.

21 Q. That's exactly right, sir. You did say it, didn't
22 you, sir?

23 A. Yes.

24 Q. You meant it, didn't you, sir?

1 A. I certainly did.

2 Q. And you're not backing away from a word you've
3 said, are you, sir?

4 A. I'll explain it, too, if you will allow me to do
5 that.

6 Q. I know that, Doctor. But so there's no question
7 about it, you're talking about his psychoneurosis and
8 exposure to these materials, aren't you, sir?

9 A. I'm talking about the exposure to these materials,
10 yes.

11 Q. And psychoneurosis?

12 A. Not directly, sir.

13 Q. Doctor, isn't that the result that we're talking
14 about, the incident, the psychoneurosis and the chloracne?
15 Didn't we just establish that?

16 A. The incident is more than --

17 Q. Excuse me, Doctor--

18 A. -- Just the materials.

19 Q. Didn't we just establish that, Doctor? Oh, I know
20 it's more than just the materials. It's the fear as well,
21 sir, it's the fear of the results of the exposure, sir, it's
22 the fear of the physical effects, you've established that,
23 sir, no quarrel about that. I agree with you one hundred
24 percent, Doctor, there is no question but what having these

1 things happen to your body causes fear. A reasonable man
2 will have that fear, and I don't quarrel with that for a
3 minutes. I accept that one hundred percent, Doctor, that
4 that is the result of being exposed to TCDD. It's a
5 perfectly normal, natural, logical result, isn't it, Doctor?

6 A. Right.

7 Q. No question about that, isn't that right?

8 A. Well, in some people it might.

9 Q. Right. I mean if -- some people might not be
10 afraid of the consequences of TCDD exposure, but a reasonable
11 person would develop a fear, wouldn't he, sir?

12 A. No, not necessarily. It all depends.

13 Q. Doctor, didn't you just say that it was--

14 A. It all depends how well adjusted they are, sir.

15 Q. All right. But we take people as we find them,
16 sir.

17 A. Yes, sir.

18 Q. Some people are well adjusted, some people aren't.
19 Some people have blond hair, some people have black hair,
20 some people are tall and some are short, some are prejudiced
21 and some are not, isn't that correct, Doctor? We take people
22 as we find them in this world, don't we, sir?

23 A. You said it, sir.

24 Q. Isn't that correct, sir?

1 A. That is correct.

2 Q. All right. And, Doctor, we find in people who will
3 develop a fear of the results of a TCDD exposure, isn't that
4 correct, sir?

5 A. A fear of the consequences of the --

6 Q. Yes.

7 A. -- Of exposure.

8 Q. I agree one hundred percent, Doctor.

9 A. The fear of the consequence.

10 Q. Doctor, there's no doubt about that, and that is
11 something that you expect will develop in particular people,
12 isn't that correct, sir?

13 A. In some people just like in people in the Army.

14 Q. In combat fatigue, right, I mean some people are
15 made psychologically different than others, aren't they, sir?

16 A. Correct.

17 Q. Some people can take a hell of a lot of stress,
18 they can be in a fox hole and be bombed day and night and
19 smoke cigarettes while it's going on. Other people because
20 of the way God made them and nature made them and the
21 environment made them, some people at the first crack of a
22 gun or even before the crack of a gun can fall apart, can't
23 they, sir?

24 A. They might.

1 Q. Isn't that correct? You know that has occurred,
2 don't you, Doctor?

3 A. Yes.

4 Q. All right. That's the way we are all made, we are
5 all different, we are all different individuals, aren't we,
6 sir?

7 A. We are.

8 Q. And we know that some people are going to get fear
9 and it's going to be for them reasonable fear, isn't it, sir?

10 A. Fear is not reasonable, fear is more often
11 unreasonable.

12 Q. Doctor, for them it's reasonable, it's what you
13 expect them to do when they're exposed to this situation?

14 A. One can't really predict that, sir.

15 Q. I know, but you know that it is going to happen in
16 certain individuals, don't you, sir?

17 A. It might, sir, yes.

18 Q. You can predict it, you can give them a
19 psychological test and predict how they're going to stand up
20 to stress, can't you, sir?

21 A. One might do that, but not successfully.

22 Q. Doctor, among one thing that is one of the results,
23 one of the causes of a psychoneurosis, isn't it, sir, is the
24 fear? Doesn't fear cause psychoneurosis, Doctor?

1 A. Fear is associated with psychoneurosis, yes, it
2 could be.

3 Q. Yes.

4 A. Fear and anxiety as in this man.

5 Q. All right. Dr. Nestmann was talking about that also
6 in the case of Mr. Willard, wasn't he, sir?

7 A. I believe he was.

8 Q. He was talking about the fact that the
9 psychoneurosis was caused by the fear from the exposure to
10 the physical results, correct, sir? Doctor, that isn't the
11 report.

12 A. Would you repeat the question please.

13 Q. Let me rephrase it, Doctor, so that we can get off
14 the edge.

15 A. Thank you.

16 Q. In your interpretation of Dr. Nestmann's report you
17 said he's talking about the results of that incident, the
18 exposure to the materials, that is what Nestmann is likely to
19 mean and also the fear, did you not, sir? Look at your
20 testimony, Doctor, would you once more, and also the fear,
21 the exposure to the products and also the fear, correct, sir?

22 A. Yes.

23 Q. Yes. And, Doctor, if as in Mr. Willard's case
24 psychoneurosis can be caused by exposure to the product, if

1 that is true, sir, it can also cause psychoneurosis in
2 others, can't it, sir?

3 A. No, sir.

4 Q. Doctor, are you assuming that it's true that it
5 caused it in the case of Mr. Willard, are you assuming that,
6 sir?

7 A. I am assuming that in Mr. Willard's case the
8 psychoneurosis is the result of the fear.

9 Q. Doctor, I want you to assume, as you said Friday,
10 that fear was one half of your answer and the exposure to the
11 materials was the other half of the answer, sir, that the
12 psychoneurosis was caused by or the result of being exposed
13 to the materials in this reaction. Would you assume that
14 please, sir?

15 A. Again I am assuming it, but that's -- because the
16 logic is incorrect, sir.

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

18 A. But there is a sequence to it, yes, sir.

19 Q. Doctor, isn't that what you said?

20 A. That is what I have said.

21 Q. All right. Now, Doctor, if that is true, sir, in
22 the case of Mr. Willard, are you assuming that it's true in
23 the case of Mr. Willard?

24 A. I am assuming it, although I don't believe it.

1 Q. All right, Doctor. You're assuming, but you don't
2 believe it. Now, if it's true in the case of Mr. Willard, it
3 can also cause psychoneurosis in others, can it not, sir?

4 A. With that assumption, yes, sir, with that
5 assumption.

6 Q. Yes. And, of course, Dr. Nestmann knew that these
7 others, Jeffers, Young, Cunningham, Stover, Haning, Martin,
8 Richardson, Wright, were all exposed to the products of this
9 runaway reaction also or this so-called explosion, you knew
10 that, didn't you, sir? Those are the persons, Doctor, that
11 Plaintiffs' Exhibit 1779 deals with that we went through and
12 pointed out historically that he had a history of all these
13 men being exposed to this runaway reaction.

14 A. No, sir.

15 Q. Doctor, he made up the report 1779, didn't he, sir?

16 A. He didn't make it up, you did, sir. These are his
17 letters, sir.

18 Q. They're his reports, aren't they, sir? I didn't
19 sign these --

20 A. Yeah, but the exhibit, sir, is yours, not his.

21 Q. Dr. Suskind, the exhibit is the Court's right now.
22 It's been admitted into evidence, but you know the thrust of
23 my question is referring to this group exhibit, which
24 consists of Dr. Nestmann's reports, don't you, sir? Dr.

1 Suskind, you're not listening to me.

2 A. Yes, I am, sir, I'm just checking on --

3 Q. Would you answer my question please.

4 A. What's the question, I'm sorry.

5 THE COURT: Doctor, please listen to the questions
6 from now on and not be looking through other materials while
7 you're being asked the question. I think it does interfere
8 with your ability to concentrate on the question.

9 Q. Doctor, I will ask it again so we can move on.
10 These reports are Dr. Nestmann's reports, aren't they, sir?

11 A. They are, sir.

12 Q. He's mentioned in each of these reports that these
13 men were all exposed to the materials of this-- he's calls it
14 explosion, you call it the runaway reaction, isn't that
15 correct, sir?

16 A. No, sir, that is not correct, sir, that is not
17 correct, sir.

18 Q. Doctor, does he mention the case of Jeffers?

19 A. Yes, sir.

20 Q. Does he mention the case of Cunningham?

21 MR. HEINEMAN: Excuse me. Could I get that--

22 A. No, sir.

23 Q. He doesn't? Doctor, look at the first paragraph on
24 Cunningham's report. He mentions in the case of Cunningham,

1 does he not, sir?

2 MR. HEINEMAN: Mentions what?

3 Q. The incident, the accident that occurred in '49,
4 contamination that was all over the place, that he was in the
5 building--

6 A. He was not, he was not in the group that was
7 considered --

8 Q. That was considered what, Doctor? Are you starting
9 to say he's not in the group that was considered to be
10 psychoneurotic?

11 A. No, in the runaway reaction.

12 Q. Doctor, look at the fifth paragraph. Doesn't he say
13 that he was in the building when the autoclave blew? How on
14 earth could you be in it more than that, sir?

15 A. Where's that, sir?

16 Q. As I told you, Doctor, the one, two, three, four,
17 fifth paragraph on Cunningham's report, sir.

18 A. Okay.

19 Q. Was he -- according to this report was he in the
20 building when the autoclave blew? Doctor, are you looking at
21 the reports?

22 A. I am looking for my --

23 Q. No, Doctor, look at the reports, would you please,
24 sir. Doctor, I'm referring to Dr. Nestmann's report, what

1 Dr. Nestmann knew or didn't know at the time he made his
2 diagnosis. I'm not concerned now at this point as to what
3 you knew, sir. Could you look at Dr. Nestmann's report, Dr.
4 Suskind?

5 A. Yes, sir.

6 Q. He does--

7 Q. According to his report, sir, yes, sir.

8 Q. According to his report the man was there, was he
9 not, sir?

10 A. According to his report.

11 Q. Doctor, according to his report Stover was there as
12 well, was he not, sir? First paragraph, Doctor. He broke
13 out following working in a building where the weed killer was
14 being made?

15 A. That is not the explosion or the accident, sir.

16 Q. Well, it is --

17 A. He was not in the accident.

18 Q. All right, Doctor, it is the contaminant then, is
19 it not, sir?

20 A. Well, you related it to the incident.

21 Q. Yes, Doctor, I--

22 A. This man was not--

23 Q. I accept that, Doctor.

24 A. This man was not in the accident.

1 Q. All he was exposed to--

2 A. I think we ought to keep the record straight.

3 Q. He was exposed to the same materials, correct, sir?

4 A. Not necessarily.

5 Q. Doctor, he is one of your group that you saw in
6 1953.

7 A. Right.

8 Q. He's got chloracne, hasn't he, sir?

9 A. Yes, sir.

10 Q. And TCDD causes chloracne, doesn't it, sir?

11 A. Yes, sir.

12 Q. You determined in this case that it is the
13 contaminant in the 2,4,5-T or the TCP that caused the
14 chloracne, have you not, sir?

15 A. It's associated with it, yes, sir.

16 Q. Have you not said that, sir?

17 A. Yes, sir.

18 Q. And Mr. Stover there was exposed to these
19 materials, was he not, sir?

20 A. He was exposed to the making of 2,4,5-T, sir, yes,
21 sir.

22 Q. My question is he was exposed to the materials, was
23 he not, sir?

24 A. He was exposed to those materials, sir.

1 Q. And Dr. Nestmann knew that, did he not, sir, from
2 this report?

3 A. Yes, he did.

4 Q. And Mr. Saxton had no neuroses, so we don't need to
5 worry about him, do we, sir, but the next one, Mr. Haning, he
6 was working in the building, was he not, sir? His problems
7 started one month after the explosion. You see that, sir?

8 A. Yes, I do, sir.

9 Q. And the next man, Mr. Martin, his problems started
10 three or four years ago, which would have been 1951 or
11 thereabouts, correct, sir?

12 A. I don't know what the date of this report is, sir.

13 Q. Well, that's not material, Doctor. He discusses
14 that his health was okay until six months after the exposure
15 to the chemical, does he not, sir? Second paragraph,
16 Doctor.

17 A. That's what this record reads, sir, yes.

18 Q. And Mr. Richardson was the first man that worked in
19 the building after the explosion? First paragraph, sir.

20 A. According to this record, sir, yes.

21 Q. Lowell Wright worked in the building that exploded
22 two years after the explosion, got the rash on his face
23 mostly. You see that, sir?

24 A. That's what the record reads, sir.

1 Q. So, therefore, Doctor, it is a fact that Dr.
2 Nestmann knew that all of these men had been exposed to these
3 materials, did he not, sir?

4 A. I believe so.

5 Q. Yes, when he made his diagnosis of severe or
6 moderate or mild psychoneurosis in the case of these men,
7 isn't that correct, sir?

8 A. No, sir, that's not correct, sir.

9 Q. Doctor, haven't we established that in his report
10 he knows, and you just got through saying that he knew they
11 were exposed to the material?

12 A. Yes.

13 Q. And he made the diagnosis of severe, mild or
14 moderate psychoneurosis in the case of each of these men that
15 we mentioned, did he not, sir?

16 A. Yes, but not causally, sir.

17 Q. Doctor, I didn't say causally, did I, sir?

18 A. Okay. As long as we agree.

19 Q. Doctor, we don't agree as to whether it was not
20 causally, but my question did not say causally. My question
21 is Dr. Nestmann when he made the diagnosis knew that these
22 men had been exposed to the chemical in question, did he not,
23 sir?

24 A. Yes, sir.

1 Q. All right. And, Doctor, if as we've established
2 then that you believe that he said the psychoneurosis
3 resulted from the exposure to the materials and the fear
4 generated by that exposure or by that explosion or by the
5 runaway reaction, if it occurred in the case of the one, then
6 it might occur in the cases of many as well, might it not,
7 sir?

8 A. No, sir.

9 Q. Doctor, didn't we just establish that if something
10 can be the cause in one, it can also cause it in others?
11 Haven't we established that this morning, Doctor, if we've
12 established anything?

13 A. It might.

14 Q. Doctor, if it caused it in one, TCDD or the
15 contaminant had caused the psychoneurosis in one in the case
16 of Mr. Willard, then it might well have caused it in the case
17 of these others, isn't that --

18 A. No, sir.

19 Q. Sir?

20 A. No, sir.

21 Q. Sir?

22 A. No.

23 Q. What's your answer. I can't hear you?

24 A. I said no, sir.

1 Q. Doctor, have you not agreed that it can cause
2 psychoneurosis, that Dr. Nestmann--

3 A. No, I have not agreed, sir.

4 Q. Excuse me, that Dr. Nestmann has said that the
5 psychoneurosis is the result of this incident?

6 A. No, sir.

7 Q. Doctor, we went through that.

8 A. The result of the incident?

9 Q. Yes.

10 A. Yes, sir.

11 Q. And the result of the exposure to the materials in
12 the incident?

13 A. No, sir.

14 Q. Doctor, don't you recall me standing up there just
15 a few moments ago and you agreed that he was talking about
16 the materials in the --

17 A. I do indeed.

18 Q. He was talking about the materials, the exposure--

19 A. I said that he was talking about the materials as
20 an initial exposure, but the sequence of events, sir --

21 Q. Doctor, there's not any sequence of events.

22 A. Yes, there are. There are sequence of events.

23 Q. Dr. Suskind, do I have to constantly go over the
24 same question and establish again? Didn't we just get

1 through saying quote " he's talking about the results of that
2 incident"; didn't we establish that, Doctor?

3 A. Yes, we have.

4 Q. Didn't we establish that he was talking about the
5 materials of that so-called explosion and Mr. Willard was
6 exposed to the products of that runaway reaction?

7 A. Yes, sir.

8 Q. All right. Now, we got that settled, that Dr.
9 Nestmann is talking about the results of the incident and the
10 Willard's exposure to the products of that incident? Are we
11 --

12 A. That is my assumption, that's my --

13 Q. That's what your explanation was.

14 A. Sir, Dr. Nestmann didn't say that, I said that.

15 Q. That's right.

16 A. Correct.

17 Q. That's what you said.

18 A. Correct.

19 Q. If that is true, Doctor, if that is in fact what
20 Dr. Nestmann is saying, sir, if he makes the diagnosis of
21 psychoneurosis in the case of one, who was exposed to
22 materials and the consequence of the exposure to the
23 materials, he might well make the diagnosis in the case of
24 the many, might he not, sir?

1 A. No.

2 Q. Doctor, are you assuming that he made the diagnosis
3 in one?

4 A. I am assuming that he made the diagnosis in one.

5 Q. And are you assuming that he made--

6 A. Made a diagnosis.

7 Q. That he made a diagnosis that it was a result of
8 the incident, which was exposure to the materials? Are you
9 assuming that, sir?

10 A. No, I'm --

11 Q. Doctor, see, that's -- I just asked you, Doctor--

12 A. It's the consequence of that.

13 Q. Doctor, I just asked you did we not make it clear
14 that that's what you said he said? Didn't we do that once,
15 twice, four times?

16 A. I said more than what you're saying, sir. I said
17 more than what you're saying.

18 Q. Doctor, I know that you said more, you said--

19 A. There's a logical sequence in that.

20 MR. CARR: Your Honor, would you ask the witness to
21 confine himself to the question I'm trying to ask him.

22 THE COURT: Doctor, you do have to confine yourself
23 to the question that counsel asked you. Gentlemen, could I
24 see you at the bench for a minute please.

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

3 THE COURT: I really don't want to go through this
4 the sixth time. You may, if you wish, order him to assume or
5 ask him to assume that he did say that so we can move on and
6 finish this part. We got about six minutes left before we've
7 got to break and I think there's more than ample basis in the
8 record for asking him to make that assumption from Friday and
9 from today, and I think this is covered in your continuing
10 objection.

11 MR. HEINEMAN: Well, Your Honor, I must strenuously
12 object to the Court suggesting that such an assumption be
13 ordered or that the man be ordered to assume such a thing.
14 Mr. Carr has continually twisted the man's statement. He
15 continually refuses to let him explain, he interrupts his
16 answers.

17 THE COURT: I'm going to interrupt you. He's got a
18 right to interrupt a nonresponsive answer, and the ones that
19 he's interrupted this morning have been nonresponsive, number
20 one. Number two, it is not twisting. I've read that
21 transcript, I was here Friday when he testified, I reviewed
22 the notes from Friday. It is not twisted. Objection is
23 overruled. It's part of the continuing objection. I want to
24 get on with this and finish this section. You may proceed,

1 Mr. Carr.

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

3 Q. Doctor, I've asked you to assume that we have
4 established that you have agreed that Dr. Nestmann has said
5 that the psychoneurosis was the result of being exposed to
6 the materials in this incident. Assuming that, sir, if it
7 caused it in that case of Mr. Willard, it could cause it in
8 the case of others, couldn't it, Doctor?

9 A. Are you talking about the psychoneurosis, sir?

10 Q. You want my question read to you again?

11 A. Yes, please.

12 (Court reporter read back the last question.)

13 A. No, sir.

14 Q. Are you assuming that Dr. Nestmann said that it
15 caused it in the case of Mr. Willard?

16 A. I have to assume that, sir, but you said that I
17 said that it caused it, and I did not, sir, in the first part
18 of your question.

19 Q. Doctor, my question said that you said that Dr.
20 Nestmann said it caused it. Now, if I didn't make it clear--

21 A. No, I did not, sir. I did not say that.

22 MR. CARR: Your Honor --

23 Q. Dr. Suskind, I want you to assume that you did say
24 that.

1 MR. HEINEMAN: Your Honor, may counsel approach the
2 bench?

3 THE COURT: Yes, you may.

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

6 MR. HEINEMAN: Here directly in the statement where
7 you say Dr. Nestmann said his psychoneurosis caused it he
8 said I didn't say that.

9 THE COURT: He did just the page before.

10 MR. HEINEMAN where?

11 THE COURT: On the paragraph that's been read to him
12 three times today. This is the same objection. We are going
13 to finish this. Your objection is overruled.

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

15 Q. Doctor, assume, if you will, that according to Dr.
16 Nestmann the materials in this explosion caused Mr. Willard's
17 psychoneurosis. Would you do that, sir?

18 A. I am assuming it, sir.

19 Q. Yes.

20 A. At your request.

21 Q. Yes. And if it caused it in the case of Mr.
22 Willard, it could cause it in the case of these others, could
23 it not, sir?

24 A. With that assumption, sir, I would say it might.

1 Q. Doctor, did Dr. Nestmann tell the commission that
2 these other ten men had severe psychoneurosis following their
3 exposure to the material? You have looked at all the reports
4 in 1782, in Plaintiffs' Exhibit 1782. Did he tell the
5 Workers' Compensation Commission that these other men had
6 severe psychoneurosis?

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

9 THE COURT: Yes, you may.

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

12 MR. HEINEMAN: Your Honor, I object to this
13 question insofar as it relates to 1782. In 1782 there are
14 also contained summaries of testimony. Now when he says
15 Suskind-- when he says Nestmann told the commission that it
16 was the result, that the psychoneurosis --

17 MR. CARR: I'll amend my question to include just
18 the reports.

19 MR. HEINEMAN: -- Because that's just not true.

20 THE COURT: Okay. Why don't you amend it?

21 MR. HEINEMAN: May I finish my record? Nestmann
22 specifically testified before the commission as is apparent
23 from the summary of his testimony that it did not cause the
24 psychoneurosis.

1 THE COURT: The question is proper.

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

3 Q. Dr. Suskind, in Plaintiffs' Exhibit 1782 did -- in
4 the reports of Dr. Nestmann's that were submitted to the
5 commission as we've gone through already, Doctor, he makes no
6 diagnosis of severe psychoneurosis in any of these reports,
7 does he, sir, that we went through last week? You recall
8 that, sir?

9 A. It doesn't matter--

10 Q. No, that was his testimony, Doctor, the one --
11 recall, you wanted to refer to his testimony?

12 A. Well --

13 Q. I'm referring to his written reports. I was
14 referring to it then, I'm referring to it now.

15 A. Your last question, sir, was about his testimony if
16 you wanted to ask me about --

17 Q. Doctor, it was not. My question--

18 A. Yes, it was.

19 Q. It was about the reports.

20 THE COURT: Doctor, answer the question that has
21 been asked of you please.

22 Q. Doctor, it was about the reports submitted to the
23 commission. Does he advise in these reports that's submitted
24 to the commission that any of these men have a severe,

1 moderate, or mild psychoneurosis that's contained in
2 Plaintiffs' Exhibit 1782?

3 A. In those limited reports he did not, sir, yes.

4 Q. All right.

5 THE COURT: Mr. Carr, is this a good point to
6 break?

7 MR. CARR: Yes, Your Honor, that's fine.

8 THE COURT: Ladies and gentlemen, we're going to
9 have to break at this time until the end of lunch. We'll
10 resume again at 1:15. I would remind you and this goes for
11 any other breaks that we take during the day, you're not to
12 discuss this matter among yourselves or with anyone outside
13 the jury panel or as of yet form any opinions or conclusions
14 about the matters on trial. Court's in recess. Gentlemen,
15 could I see you in chambers for a moment please.

16 (At this time the following proceedings were had in
17 chambers out of the hearing of the jury.)

18 THE COURT: You said you had something to talk about
19 with Dr. Suskind?

20 MR. NASSIF: Just his schedule, Your Honor, just his
21 schedule.

22 MR. CRAVEN: Judge, we're trying to get from Mr.
23 Carr some idea of how long this is going to go on. Everyone
24 knows the day count as to how long this has gone on, and it's

1 the same kind of, we think, verbally beating on the witness
2 to make the witness use Mr. Carr's choice of language, but in
3 any event, Dr. Suskind has a longstanding commitment for
4 Thursday, and simply can't be here on--

5 THE COURT: What is the commitment.

6 MR. CRAVEN: He has -- Joe knows the names, but he
7 has two meetings to go to Thursday.

8 MR. NASSIF: He has a meeting at noon, your Honor,
9 with the director of the National Institute of Occupational
10 Safety and Health, and I had the name of the individual, I
11 don't have it with me, who's coming in from out of town with
12 a number of other individuals from the National Institute of
13 Occupational Safety and Health to meet with Dr. Suskind and a
14 number of individuals at the University of Cincinnati and
15 that starts on the noon. And he has a meeting in the morning
16 with the university and its attorney, but in any event, I
17 mean, the meeting in the morning doesn't make any difference,
18 because he'd have to be back there by noon time anyway on
19 Thursday.

20 MR. CRAVEN: This has been going on since February
21 14th or 13th.

22 MR. NASSIF: 10th.

23 THE COURT: The meeting has been set since then?

24 MR. NASSIF: The meeting was set even before that.

1 THE COURT: Oh, yes, right. He started testifying
2 around, I think it was February 10th is when he started.

3 MR. NASSIF: This meeting has been set for several
4 months, your Honor. Dr. Suskind was hopeful that he would be
5 off the stand before this, but advised us of the meeting. Of
6 course it carries into Friday, but we're off Friday anyway.

7 THE COURT: Friday is a Court holiday.

8 MR. NASSIF: Right. I told Dr. Suskind that wouldn't
9 be a problem.

10 THE COURT: We're off Friday anyway. Okay.

11 MR. CARR: Well, our position is it's one more day
12 to extend the length of the case, but it's all according to
13 how important it is to this man. If it's -- if it's of vital
14 importance to him, why, we've accomodated others for --
15 including me, including -- for important meetings, and I
16 can't -- I have to rely upon as far as I'm concerned upon the
17 good faith of the people making the representations that it
18 is an important meeting that the man -- that this Court can
19 consider takes precedence over this procedure.

20 THE COURT: Okay. Well, you know, I mean you
21 presented it to me as an important meeting. We can take
22 Thursday off.

23 MR. NASSIF: Thank you, Your Honor. Okay.

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

1 (At this time the following proceedings were had in
2 chambers out of the hearing of the jury.)

3 THE COURT: This will just take a minute. I think
4 not all the jurors have gotten back yet. I want to note as
5 per the matters that we discussed this morning we have
6 accommodated a number of witnesses as far as other
7 professional obligations, and I'm perfectly willing to
8 accommodate -- I'm perfectly willing to accommodate Dr.
9 Suskind to the extent that's reasonable as far as his other
10 professional obligations are concerned. Noting the problems
11 that we have had with Dr. Suskind on the witness stand and
12 despite those problems I'm willing to extend to him the
13 professional courtesy of trying to accommodate important
14 matters that he's set aside time for in his schedule and that
15 he has had as a longstanding obligation.

16 And I would appreciate it, since I am taking this
17 attitude, if he would try to accommodate me and try to follow
18 for a change this Court's admonitions, this Court's rules,
19 and this Court's requests as far as his conduct on the
20 witness stand. You gentlemen are in close contact with him.
21 Obviously I would appreciate it if you would convey that both
22 my decision as to our being off Thursday to accommodate his
23 schedule and my request that he return this professional
24 accommodation by following what I request as far as his

1 conduct on the witness stand. There's not a doubt in my
2 minds that up to this point that he has not followed it, that
3 he's perfectly capable of following it, that his actions to
4 this point have been deliberate, because the man is too
5 sharp, both intellectually and in every other way not to
6 have. The only conceivable excuse that existed before as to
7 his not having that, I think, has been remedied by his
8 willingness now to wear his hearing aid device in front of
9 the jury, and the fact that he's 73 years old is a fact that
10 is notwithstanding, because the person obviously is none the
11 worse for wear. I'd like to be in as good a shape at the age
12 of 73. So I would appreciate it, hearing aid and all, I
13 would appreciate it if he would, if you would convey that to
14 Dr. Suskind. We'll adjourn at the normal time Wednesday and
15 he's free to go. I guess you gentlemen are assuming we still
16 have our argument Wednesday afternoon, but I would appreciate
17 it if he would return the professional courtesy of following
18 my requests as to his conduct on the witness stand.

19 MR. CRAVEN: Judge, while we're talking about that
20 and we obviously respectfully disagree with the conclusion as
21 to the cooperation of Dr. Suskind. This --

22 THE COURT: I'm aware that you do.

23 MR. CRAVEN: This cross-examination is, we think,
24 abusive of the witness, and if Mr. Carr would ask a question

1 and let the witness respond instead of walking on his
2 response with a new question when he obviously is getting an
3 answer that he didn't want and then reconstituting the same
4 question over and over and over again and trying to entrap
5 the witness to using or forcing the witness to use his own
6 words. Mr. Carr wants to testify through this witness, and
7 this is -- this is harassment of the worst sort.

8 MR. CARR: Perhaps counsel wasn't at the bench when
9 the same argument was made by Mr. Heineman.

10 MR. CRAVEN: I was not.

11 MR. CARR: The Court found at that time and told
12 Mr. Heineman that I was not walking on the answers, that I
13 had every right to interrupt a nonresponsive answer in order
14 to, from my viewpoint in order to prevent the witness from
15 giving to the jury an answer that he wants to give,
16 notwithstanding the fact that it's in no way responsive to
17 the question asked. Counsel has not seen fit to impress upon
18 the witness the requirement that this Court has made that the
19 witness respond to the question asked. Counsel has stated
20 earlier, Mr. Heineman stated earlier that he disagrees with
21 the Court's interpretation of a responsive or nonresponsive
22 answer. You, Mr. Craven, apparently also disagree with what
23 the Court has considered to be appropriate conduct on the
24 part of a witness and whether -- whether you like it or not,

1 it is the Court's ruling, which I'm bound by, which you're
2 bound by, and there's no question in my mind but what this
3 witness is clever, he lies, he pretends that he doesn't know
4 the problems that I'm talking about when I ask the question.
5 Just read a bit of his transcript today. I asked him, now,
6 Doctor, if a man has pain, he has pain, doesn't he, and the
7 response is, no, he doesn't. The man -- and that's -- there
8 have been a number of places that he absolutely refuses to
9 allow his knowledge of the English language, his knowledge of
10 what's to take place in the courtroom, the orders that the
11 Court has given him. The Court started threatening the
12 witness with contempt action if he did not respond
13 appropriately. The threats did no good, didn't bother this
14 witness in the least. He has gone on his merry way. The
15 Court has requested this witness to respond appropriately.
16 The requests have gone ignored. The Court has ordered
17 counsel to instruct the witness to respond to the questions
18 appropriately. The requests or the instructions from counsel
19 have gone ignored and unabated.

20 If I did not interrupt the witness when he was
21 giving a nonresponsive answer, I would be completely, and the
22 jury would be completely at the mercy of what this witness
23 wants to say, because the orders of the Court have done
24 absolutely no good to reign the man in, the requests of the

1 Court have done no good to reign the man in, the instructions
2 of counsel have done no good to reign the man in, and the
3 only conceivable way that I can prevent a nonresponsive
4 argumentative answer to come into this record is in fact to
5 interrupt him when it's clear he's making an unresponsive
6 answer.

7 The Court has held that I have the right to do
8 that, and, counsel, I suggest that you have no right to take
9 anything, any issue with what I have done in view of the
10 Court's ruling. You said that I'm doing that to harass the
11 witness. The Court has held I've got the right to do that so
12 you in effect are saying that this Court has allowed me to
13 harass the witness when in fact this Court has, I'm sure,
14 conceives it to be the only way this witness can be even
15 halfway controlled is that I do interrupt a nonresponsive
16 answer.

17 MR. CRAVEN: Rex, the difficulty with the position
18 you take is that you arrogate to yourself the role of Judge.

19 MR. CARR: No, I'm telling you what the judge
20 ruled.

21 MR. CRAVEN: No, I'm telling you what you're doing.

22 THE COURT: No, no, now wait a second.

23 MR. CRAVEN: Judge, let me just make --

24 THE COURT: No, I want to make a point here.

1 MR. CRAVEN: Well, may I--

2 THE COURT: There have been instances when I have
3 held that an answer should be continued, because I thought it
4 was responsive. Unfortunately in the majority of the cases
5 in which the interruption has occurred it is because it has
6 been upheld by me as interruption of a nonresponsive answer.
7 I wish it were in the minority. Unfortunately, it's been in
8 the majority, and I think Mr. Carr's actions have been
9 correct. When the interruption has not been proper, I've
10 allowed the answer to proceed, and I think in all of those
11 instances where there have been interruptions, I have allowed
12 counsel to approach the bench to object on nonrepetitive
13 objections.

14 MR. CRAVEN: Judge, I have not seen all the
15 testimony.

16 THE COURT: I realize you haven't.

17 MR. CRAVEN: I have been here for all of it for the
18 last several days, and I have to -- I have to disagree with
19 Mr. Carr. When he walks on the testimony when the answer --
20 he makes a determination he doesn't like the answer rather
21 than it's nonresponsive, and whether it is or is not
22 responsive is fairly debatable, but he decides it's not
23 responsive and interrupts the witness' whereas if it's fairly
24 debatable he ought to let the witness complete the answer and

1 then move to strike it if it's not responsive, and then the
2 Court would make that determination, but following the
3 process that Mr. Carr uses, Mr. Carr determines what's
4 responsive.

5 THE COURT: I completely disagree. I've listened to
6 him, too. The witness is sitting closer to me than he is he
7 is to anyone else in this room, I think, and as I said,
8 unfortunately in the majority of the times when Mr. Carr has
9 interrupted, it has been because it's a nonresponsive
10 answer. I wanted you to convey what I said to the witness.
11 We have gone through this before. Let's get ready so that
12 when we get our jurors together we can go back into trial.

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

14 THE COURT: Ladies and gentlemen, I apologize for us
15 starting so late. We had some matters that had to be taken up
16 in chambers before we could proceed. Also let you know that
17 this Thursday we will not be having court, so if you would,
18 note that down please. Mr. Carr, you may proceed.

19 Q. Dr. Suskind, I'd like to, if possible, go through
20 some, the reports that are Nestmann reports that are part of
21 1782. For convenience I'm going to give you a -- the report
22 itself that is from Exhibit 1782.

23 (Plaintiffs' Exhibit 1784 marked for
24 identification.)

1 MR. HEINEMAN: May I see it please?

2 MR. CARR: Yes, I intend to.

3 Q. Hand you 1784, Dr. Suskind, dealing with Mr.
4 Bailey. It shows his complaints to be, chief complaints to
5 be tired, worn out all the time, sleepy all the time, back
6 hurts occasionally, and has a place on his bottom, has a few
7 headaches, legs that bothered him, tired, weak, and go to
8 sleep easily, chest pain around his heart all the time, is
9 that correct, sir?

10 A. That is what the reports reads sir.

11 Q. The report also says, the second -- it describes
12 more in detail his exposure and the problems that he had from
13 the exposure, and I don't intend to read each of those, sir,
14 but in the reference to the headaches, the second paragraph
15 from the bottom the report states that the headaches preceded
16 the explosion and the exposure, does it not, sir?

17 A. Yes, it does, sir.

18 Q. And it's also pointed out that the libido problem
19 or rather he talks about a sexual problem, problem getting
20 erections following the exposure, but he says it's now
21 getting better, does he not, sir?

22 A. Yes, that's on Page 2, yes, sir.

23 Q. As far as his reflex is concerned, his reflexes
24 were all either two plus or four plus, were they not, sir?

1 MR. HEINEMAN: Excuse me, Your Honor. May counsel
2 approach the bench?

3 THE COURT: Sure.

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

6 MR. HEINEMAN: Since the Court has already ruled
7 with respect to my request to have Plaintiffs' Exhibit 1782
8 admitted, and my objection to any testimony about 1782 or any
9 questioning of this witness about 1782 without its having
10 been admitted, I'm assuming that that same objection and
11 ruling will go --

12 THE COURT: Sure.

13 MR. HEINEMAN: -- With respect to any portions of
14 1782 which may be remarked as other exhibits.

15 THE COURT: Absolutely.

16 MR. HEINEMAN: It will be a continuing objection so
17 I won't have to make it each time.

18 THE COURT: Sure. I think that's the proper way to
19 do it. No problem.

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

21 (Plaintiffs' Exhibit 1785 marked for
22 identification.)

23 Q. Doctor, handing you now Plaintiffs' Exhibit 1785,
24 that is a report dealing with Mr. Haulman, is it not, sir?

1 A. Yes, it is, sir.

2 Q. And did I have the one marked that has my
3 underlining on it or did I give it to the Court or to
4 counsel?

5 THE COURT: I think you gave it to me.

6 MR. CARR: All right. May I exchange it?

7 THE COURT: Sure.

8 MR. CARR: Thank you.

9 Q. Doctor, Mr. Haulman's complaints were, chief
10 complaints were tired in the legs, highly nervous, under
11 treatment for gas, chest pains in the left chest, correct,
12 sir?

13 A. That's what the record reads in part, sir, yes.

14 Q. He states according to this report that he was
15 completely well until he worked in that building, isn't that
16 correct, sir?

17 A. That's not altogether accurate, about six months
18 after he worked in the building, six months after he worked
19 in the building.

20 Q. Yes, but he was completely well until after he
21 worked in that building, isn't that correct, sir?

22 A. That's what the records reads.

23 Q. That's what I asked you, Doctor. As far as his
24 nervousness is concerned, he's been nervous for five years,

1 and his report is dated June 6, '55, and he thinks his
2 nervousness is getting worse, correct, sir?

3 A. It says the nervousness has increased, yes.

4 Q. Well, it says the nervousness is getting worse and
5 as the bumps and aches disappear, the nervousness increased?

6 A. Yes.

7 Q. Doctor, it also points out that he had trouble with
8 the diminution of sexual desire, correct, sir, he had
9 relations three to four times a week. Now his average is
10 once a week, he's having trouble getting an erection now,
11 that is, in June, '55. Do you see that, sir?

12 A. Yes, that is how the record reads, sir.

13 Q. His reflexes are all two plus and three plus,
14 aren't they, sir?

15 A. That's correct, sir.

16 (Plaintiffs' Exhibit 1786 marked for
17 identification.)

18 Q. Handing you now Plaintiff's Exhibits 1786, which
19 refers to Mr. Hawley. This is dated, looks like it might be
20 August of '55, correct, sir, sometime in '55 at least, is
21 that correct, sir?

22 A. Well, it's sometime in '55 is all I can say.

23 Q. His chief complaint was his legs hurt bad, he tires
24 easily, his legs are so painful that he's awakened at night,

1 and he still has some rash left, is that correct, sir? The
2 chief complaints right at the top of the page, Doctor.

3 A. Yes, that's accurate, sir.

4 Q. And he also states as far as his history is
5 concerned that he had -- he worked some eight months in the
6 old plant, had a considerable exposure according to him, and
7 he says he had always had good health until he got sick with
8 that exposure, isn't that correct, sir? Right in the middle
9 of that page, Doctor, past history. He has always had good
10 health until he got sick with this exposure. Do you see
11 that, Dr. Suskind?

12 A. Well, I don't see it as you state it, sir. That's
13 why I'm a little --

14 Q. Well, let me read it exactly. Quote " he has always
15 had good health until he got sick with this exposure" end of
16 quote. Isn't that what it says, sir? Do you see it, sir, or
17 can't you find it?

18 A. Yes, I see it, sir.

19 Q. That's exactly what it says, isn't it, sir?

20 A. That's what it says in this report, sir.

21 Q. Yes. As far as his reflexes are concerned he's got
22 two plus knee jerks and ankle jerks on the lower extremities,
23 but his upper extremities or triceps and the biceps are both
24 one plus, correct, sir?

1 A. That's how the record reads, sir.

2 Q. His abdominals are four plus as are his peripheral
3 pulsations, is that correct, sir?

4 A. That's correct, sir.

5 (Plaintiffs' Exhibit 1787 marked for
6 identification.)

7 Q. Handing you Plaintiffs' Exhibit 1787 that is a
8 report of Dr. Nestmann dealing with a Mr. Lane, is it not,
9 sir?

10 A. It is.

11 Q. His chief complaint as of November 12th, 1955 were
12 nervousness, heart bothers him a little, aches and pains, has
13 not had as good health as prior to the explosion, correct,
14 sir?

15 A. That's what this record reads, sir.

16 Q. And according to what Dr. Nestmann reports the man
17 denied illness prior to the explosion, did he not, sir?

18 A. That's what the record reads, sir.

19 Q. And he also states in this record that the
20 nervousness has been present since the explosion, and it
21 seems -- he seems to get worse all the time. He did not
22 notice the nervousness until 1950, but it's present all the
23 time now, is that correct, sir?

24 A. That's what this record reads, sir.

1 Q. Doctor, you said that's what this record says,
2 sir.

3 A. Yes.

4 Q. Is there a report of Dr. Nestmann that reads
5 differently than this?

6 A. No, not Dr. Nestmann, sir.

7 Q. Doctor, is there some other report of another
8 physician in 1955, which -- where he doesn't report that he's
9 nervousness and has these problems?

10 A. I don't know in '55, but there is in '53, sir.

11 Q. 1953 you're talking about your report, sir, is that
12 what you're talking about, Doctor? Sir, would you answer my
13 question please, sir?

14 A. I am looking at my report, sir, to see whether I am
15 accurate.

16 Q. Is that the report you're talking about, Doctor?

17 A. I have to look at it to see whether or not it is
18 there, sir.

19 Q. Doctor, you said it was, you said there was a
20 report in 1953. Is it your report that you're talking about,
21 sir? Would you answer my question, sir?

22 A. I am looking at my report, sir. I don't have it in
23 this report, sir, no, sir.

24 Q. You gave me an answer before you looked at the

1 report, did you not, sir? Didn't you, sir?

2 A. There are medical reports of the examination of Mr.
3 Lane.

4 Q. Excuse me, Doctor. Doctor, you were referring to
5 the 1953 report, weren't you, sir?

6 A. Not necessarily.

7 Q. Doctor, didn't you say 1953 report?

8 A. Well, this is the medical.

9 Q. Excuse me, Doctor. Didn't you say that, sir?

10 A. It didn't have to be my report though.

11 Q. Doctor, didn't you say the 1953 report?

12 A. I said a 1953 report.

13 Q. Doctor, you didn't even see him in 1953.

14 A. No, I didn't see him myself, sir.

15 Q. Doctor, do you have some knowledge of some other
16 report in 1953 in which Mr. Lane isn't reported as saying
17 he's nervous and has these problems?

18 A. I believe there are medical department reports
19 which are -- which indicate that he doesn't complain in -- at
20 the time of those examinations as he does in here, sir.

21 Q. Doctor, do you have knowledge of some report, sir,
22 in which that's stated?

23 A. Well, I believe I have seen it.

24 Q. Would you answer my question, Doctor. Do you

1 have--

2 A. I believe I have seen such a report.

3 Q. -- Knowledge of a report in which that's stated,
4 sir?

5 A. I believe I have seen such a report.

6 Q. My question is-- Is that a yes, you do have
7 knowledge, sir?

8 A. Yes, yes.

9 Q. When did you last see the report, Doctor?

10 A. I can't recall, sir, but --

11 Q. Give me your best judgment when you last saw that
12 report with reference to Mr. Lane.

13 A. I believe it might be since this -- since my
14 testimony, since my testimony started, sir.

15 Q. I'd like you to give me your best-- And counsel
16 show it to you?

17 A. I have seen a lot of reports, sir, and I believe I
18 saw it.

19 Q. Did counsel show it to you, Doctor?

20 A. Yes.

21 MR. CARR: May I have it?

22 A. I don't have it.

23 MR. CARR:-- Mr. Heineman, some report on Mr. Lane
24 dated from '53.

1 MR. HEINEMAN: I don't have any such report here,
2 Mr. Carr.

3 MR. CARR: Thank you. Do you have such a report,
4 counsel?

5 MR. HEINEMAN: I don't know. I'd have to look and
6 see.

7 Q. Doctor, is it a fact, is it not, that you simply
8 have not seen such a report?

9 A. No, it's not a fact that I have not seen, sir.

10 Q. All right. If you have seen it, then counsel will
11 give it to us tomorrow, and we'll find out, won't we, Doctor?

12 MR. HEINEMAN: Your Honor, may counsel approach the
13 bench?

14 THE COURT: Sure.

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

17 MR. HEINEMAN: I assume that there will be no
18 further admonitions from the Court to me about requesting
19 such information from Mr. Carr like he just did from me
20 without any admonition from the Court. You will recall the
21 Court admonished me that I should not ask him for citations
22 in front of the jury or anything like that, and now he has
23 done this with me in connection with this thing. I don't know
24 what report the doctor is referring to, but I assume that

1 admonition since it apparently does not apply to Mr. Carr
2 will no longer apply to me either.

3 THE COURT: You're telling me that a request to --
4 you're suggesting that a request to cite where in two years
5 of prior evidence something exists equals a request for
6 production of materials as far as requests, aren't you?

7 MR. HEINEMAN: I am suggesting to the Court that
8 what Mr. Carr just did was exactly what the Court requested
9 not be done on Friday.

10 MR. CARR: That simply isn't so. The witness
11 suggested that he had seen a report since he started
12 testifying.

13 MR. HEINEMAN: He didn't use my name, did he, sir?

14 MR. CARR: He said counsel, you're the counsel.
15 You're the chief counsel, you're responsible for all of them,
16 and you're responsible for giving me that material if you
17 have such material. And he's the one that said counsel
18 showed him a 1953 report relating to Mr. Lane. I think it's
19 perfectly proper during the course of this examination if you
20 have such a report to ask you for it. It's a far cry from
21 asking me to go to a transcript two years ago and pull out a
22 citation for you.

23 MR. HEINEMAN: Well, Your Honor, may I get this
24 clarification of what the Court's ruling is?

1 THE COURT: I haven't made any ruling. I've not
2 been requested to make a ruling. If you're asking that I
3 make a ruling as far as equivalencies like that, that
4 request, I think, is improper. I take each of these
5 situations as they come up, and I evaluate them. I have
6 except for the points in which I specifically made certain
7 ground rules that apply to all counsel. I take each of these
8 situations as they come up and rule on them accordingly and
9 admonish accordingly.

10 If you have such a report or if you don't, I would
11 appreciate it being produced. I'm ordering that it be
12 produced. If not, you know, let us know that you don't have
13 it.

14 MR. HEINEMAN: Let me ask you this, Your Honor. On
15 an occasion when Mr. Carr, and this is clarifying what the
16 Court has in mind -- on an occasion when Mr. Carr seeks to
17 impeach a witness with prior testimony, am I permitted to ask
18 him the citation for that testimony?

19 THE COURT: I have told you a dozen times, I'm not
20 in the habit of making these generalized or advisory
21 rulings. I have ruled on a number of different situations, I
22 think my general outlines are clear and I'm repeating it
23 again except for the points where I lay out certain general
24 ground rules that apply to all counsel. I evaluate a

1 situation as to the specifics of what happened, the context
2 in which it happened and exercise my discretion accordingly.
3 Now, that is the only answer that I am going to give to the
4 question that you asked me, cause you're asking me basically
5 for an advisory type of ruling, and I have not given that to
6 either side, I don't intend to, and I have given both of you
7 gentlemen certain general guidelines of propositions that I
8 want followed. I have made I don't know how many rulings in
9 this case, but I would assume that some sort of a general
10 pattern has emerged out of them, but -- which you can figure
11 as well as I can. I'm not going to make an advisory ruling.

12 MR. HEINEMAN: Okay, Judge, but what I'm asking is
13 you gave us a general ruling on Friday with respect to that,
14 and I'm assuming by what you're saying now this situation
15 that I have just described to you does not fall within that
16 general ruling.

17 MR. CARR: Your Honor, may I speak to that? I have
18 always given a citation whenever I'm attempting to impeach a
19 witness with the record. I always have the record --

20 MR. HEINEMAN: You frequently do.

21 MR. CARR: I have never attempted to impeach this
22 witness with what he's said other than with the record unless
23 it's one that he just said it ten minutes before, the
24 afternoon before, and we don't have the record, obviously I

1 don't have it, but where the witness has previously testified
2 and I've said that he has and I'm using his testimony to
3 impeach him, I always give you the citation without a
4 request.

5 THE COURT: I think you've both been in the position
6 of impeaching witnesses where the record hasn't been produced
7 yet or prepared yet, but other than that, I think that both
8 of you have given the citations. I know that you have, and I
9 think that you have also, and I think the other attorneys in
10 your firm have done that also, so I don't really see where
11 the problem is.

12 MR. HEINEMAN: Okay. I just want to be sure what
13 you're talking about.

14 THE COURT: I think that's the proper way to do that
15 if it exists. Obviously if it hasn't been prepared yet, it
16 can't be given.

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

18 Q. Doctor, the reflexes of -- first of all, there's no
19 libido or sexual problem mentioned by -- in this report
20 relative to Mr. Lane, is there, sir?

21 A. I don't see any, sir.

22 Q. So I take it we can assume that he didn't mention
23 one to the doctor or if he did, it was not reported in this
24 report at least, isn't that correct, sir?

1 A. I would assume that, sir.

2 Q. With regard to the reflexes, the statement that he
3 doesn't give the grading for his deep tendon reflexes, but he
4 says they are normal, does he not, sir?

5 A. Yes.

6 Q. And the other neurological reflex tests that he
7 gave he called either negative, normal or two plus or four
8 plus, isn't that correct, sir?

9 A. There are no abnormal reflexes, sir, and --

10 Q. I wonder if you could answer the question the way I
11 gave it to you, Doctor?

12 A. Would you repeat the question?

13 (Court reporter read back the last question.)

14 A. There are no four plus reflexes here, sir.

15 Q. You're correct, that's the peripheral pulsations.

16 A. That's right, those are not reflexes.

17 Q. That's correct, they are not, are they?

18 (Plaintiffs' Exhibit 1788 marked for
19 identification.)

20 Q. Doctor, Plaintiffs' Exhibit 1788 refers to Mr.
21 Albert B. Slater, does it not, sir, Dr. Nestmann's report
22 referring to Mr. Slater?

23 A. That's correct, sir.

24 Q. And it's dated, looks like August something, 1955,

1 correct, sir?

2 A. That sounds correct, sir.

3 Q. His chief complaints are back and joints hurts and
4 ache, shortness of breath, has lumps on his right elbow and
5 on his privates, which would be his testicles or penis, would
6 it not, sir?

7 A. Yes.

8 Q. And, Doctor, this man says that he hasn't felt well
9 for five years, started with his knees and elbows, has lump,
10 back problem aggravating all the time, correct, sir?

11 A. Would you repeat the last part of that question
12 please.

13 (Court reporter read back the last question.)

14 A. Yes, that's a summary of the first paragraph, sir,
15 yes.

16 Q. And, Doctor, there's no mention in this report as
17 to his sexual problems, is there, sir, other than the lumps
18 on his " privates"?

19 A. I don't see any, sir.

20 Q. Doctor, as far as his reflex is concerned, his knee
21 jerks are four plus and his other deep tendon reflexes are
22 two plus, are they not, sir?

23 A. Correct.

24 (Plaintiffs' Exhibit 1789 marked for

1 identification.)

2 Q. Handing you now what's been marked Plaintiffs'
3 Exhibit 1789, that's a report of Louis E. Riffle, is it not,
4 sir?

5 A. That is correct, sir.

6 Q. It's dated July 11th, 1955, is it not, sir?

7 A. Yes, sir.

8 Q. Is that correct, sir?

9 A. Yes, sir.

10 Q. Now, Doctor, thus far all of these reports of Dr.
11 Nestmann that we have been referring to in this Exhibit 1782
12 they're all -- none of them are written on Dr. Nestmann's
13 stationery, are they, sir, they're all retyped with his name
14 at the top, isn't that correct, sir?

15 A. I'm sorry, what do you mean by 1782, sir?

16 Q. The large exhibit, that thick exhibit that we're
17 dealing with, sir.

18 A. Sorry.

19 Q. These reports that I'm giving you Doctor -- Doctor?

20 A. Yes, sir.

21 Q. These reports that I'm giving you are all from
22 1782. Now, look at the reports we've just looked at,
23 Doctor. All the reports thus far we've just looked at none
24 of these reports are on Dr. Nestmann's stationery, are they,

1 sir, they are all retyped reports, aren't they, sir?

2 A. I don't know, sir.

3 Q. Doctor, are any of them on his stationery?

4 A. I don't know whether he's done this or anybody else
5 has. I have no idea, sir.

6 Q. My question is, sir, none of these reports are on
7 his stationery that we've looked at thus far that's part of
8 this exhibit, isn't that correct?

9 A. It doesn't appear to be his printed stationery,
10 sir.

11 Q. What kind of stationery can you have other than
12 printed stationery?

13 A. Well, it might be that for this purpose he simply
14 put it in this fashion. I don't know.

15 Q. Doctor, we've seen before --

16 A. Sir, I was not there to observe how this was done,
17 sir.

18 Q. Excuse me, Doctor, we have seen before, have we
19 not, sir, Exhibit 1779 with the exception of the report on
20 Mr. Stover, they're all on printed stationery, aren't they,
21 sir? I'm sorry, there's two, Richardson and Stover both are
22 on -- not on printed stationery, but Jeffers, for instance,
23 shows his letterhead clearly. You can see that, correct,
24 sir?

1 A. Umhm.

2 Q. And all the others have got the printed letterhead
3 except the two I mentioned, correct, sir?

4 A. The two you mentioned were who, sir?

5 Q. Stover and Richardson.

6 A. Yes, I believe so.

7 Q. Yes. Now, Doctor, with regard to --

8 MR. HEINEMAN: Excuse me, Your Honor. May counsel
9 approach the bench?

10 THE COURT: Sure.

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

13 MR. HEINEMAN: The one on Cunningham doesn't have
14 anything at all on the top of it.

15 MR. CARR: I'll be glad to put that in the record.

16 MR. HEINEMAN: I object to it.

17 MR. CARR: Be happy to put that in the record,
18 counsel.

19 THE COURT: Why don't you add that.

20 MR. HEINEMAN; Neither does the one on Haning,
21 Cunningham and Haning don't have anything on the top,
22 Richardson.

23 MR. CARR: I already said that, counsel.

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

1 Q. Doctor, in addition to the two we mentioned, there
2 are two others in 1779 that do not have a letterhead as well,
3 are there not, sir, Haning --

4 MR. CARR: Who else was it, counsel?

5 MR. HEINEMAN: Cunningham.

6 Q. Cunningham, Haning and Cunningham. Is that
7 correct, sir?

8 A. I believe there are four altogether instead of two,
9 sir.

10 Q. Fine. Now, Doctor, back to Mr. Riffle's report of
11 July 11th, 1955. I think it's 1789, is it, sir?

12 A. I have it, sir.

13 Q. His chief complaints were aches in the legs and
14 back, wears out easily, hurting through the chest aggravated
15 by deep breath, hears poorly out of right ear, libido only
16 once every two or three weeks, difficulty maintaining an
17 erection, his legs and arms go to sleep if they stay in one
18 position for any length of time, is that correct, sir?

19 A. That's the way the record reads, sir.

20 Q. According to this record, this man has also been
21 unwell since the explosion of 1949, correct, sir?

22 A. That's what this record reads, sir.

23 Q. Doctor, it also -- this record also points out that
24 he has this problem in his muscles and joints, feels like

1 he's walked on his feet all day, he's no better on vacations,
2 avoids strenuous activities, he's been wearing out easily for
3 four years, isn't that correct, sir?

4 A. Those are some of the things he says, sir.

5 Q. He also says, does he not, Doctor, as far as his
6 libido is concerned it's decreased from twice or more per
7 week to once every two or three weeks now, correct, sir?

8 A. Yes, that is correct, sir.

9 Q. And his legs and arms go to sleep if they're left
10 in one position a few minutes, that's been present for four
11 or five years?

12 A. That's what this record reads, sir.

13 Q. And it also says, does it not, this record also
14 says that his legs and arms will jump occasionally?

15 A. That's what the record reads, sir.

16 Q. And, Doctor, the record also shows that his deep
17 tendon reflexes were all two plus, were they not, sir?

18 A. Yes, I believe so.

19 (Plaintiffs' Exhibit 1790 marked for
20 identification.)

21 Q. Handing you now Plaintiffs' Exhibit 1790, you
22 recognize that as a report on a Mr. Ival J. McLanahan dated
23 November 26th, 1955, is it not, sir, by Dr. Nestmann?

24 A. I see the record on Ival J. McLanahan, sir, yes.

1 Q. It bears the date November 26th, '55?

2 A. Yes, sir.

3 Q. His chief complaints are chest hurting, when he
4 gets up, he can hardly get his clothes on, he loses strength
5 from time to time, is that correct, sir?

6 A. That's what this record reads, sir.

7 Q. He was involved in the cleanup and while he was off
8 work he noted that his arms and legs and back bothered him.
9 It's --- apparently this trouble has been continuing ever
10 since and bothers him quite a bit, correct, sir?

11 A. That's what this record reads, sir.

12 Q. It also states that he had a loss of libido in 1950
13 which worried him quite a bit. You would interpret that,
14 would you not, that the loss of libido was confined to 1950
15 and has not been there, he's had no problems since?

16 A. I would assume that that's what he meant, sir.

17 Q. He also says he admits he's pretty nervous,
18 correct, sir?

19 A. That's what the record reads, sir.

20 Q. His deep tendon reflexes are all two plus, aren't
21 they, sir?

22 A. Yes, sir, they are.

23 (Plaintiffs' Exhibit 1791 marked for
24 identification.)

1 Q. Handing you how Plaintiffs' Exhibit 1791, that is a
2 report on Mr. James C. Markum dated February 4th, 1956, is it
3 not, sir?

4 A. Yes, sir, it is, sir.

5 Q. And, Doctor, his chief complaints were that his
6 legs and arms go to sleep, but it doesn't interfere with his
7 job, his construction job as a pipe fitter at which he works
8 five or six days a week. He still has some chloracne, has he
9 not, sir?

10 A. That's what the record reads, sir.

11 Q. He also states that he has aching in his arms and
12 shoulders that did not precede the accident and that he's
13 also a little nervous along with hurting in his chest, which
14 he notices is worse in the evening?

15 A. Yes, that is the -- that is what the way the record
16 reads, sir.

17 Q. His deep tendon reflexes are all four plus, are
18 they not, sir?

19 A. They are, sir.

20 Q. And his abdominals are all one minus, aren't they,
21 sir?

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

23 Q. Doctor, I didn't ask you --

24 A. They are one minus, sir, yes.

1 Q. -- What it means, did I, sir? His cremasteric is
2 also one minus, isn't it, sir?

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

4 Q. You told us, Doctor, that cremasteric was a jaw
5 muscle, jaw reflex?

6 A. Right.

7 Q. Doctor, in point of fact it's the reflex of the
8 muscles that suspend the testicles, is it not, sir?

9 A. I'm sorry, sir, yes, you're right.

10 Q. Yes, it is, isn't it? Doctor, the -- and that is a
11 superficial reflex and not a deep tendon reflex, isn't it,
12 sir?

13 A. Like the abdominals, sir, yes.

14 Q. I'm sorry?

15 A. Like the abdominal reflex it's superficial.

16 Q. Yes, I know that, Doctor. My question is the
17 cremasteric is a superficial reflex, isn't it, sir?

18 A. Yes, it is, sir.

19 Q. His was one negative, sir, according to this?

20 A. I don't know what the one negative means, sir. It
21 could be one dash as far as I'm concerned.

22 Q. Doctor, the other reports have a number and then
23 the plus, don't they, sir?

24 A. Correct.

1 Q. And the one on the abdominals and the cremasteric
2 all have a negative, have they not, sir? I understand you
3 don't know what it means, Doctor. I'm simply pointing out in
4 the record that's what it is.

5 A. I don't think whether that's negative or a dash or
6 a minus. I have no idea. It could be any one of those.

7 Q. Doctor, you do have an idea. If the others are all
8 plus signs behind the numbers have you ever seen a number in
9 this report, sir, where there was not either a plus or a
10 minus before it -- behind it?

11 A. I haven't seen one with a minus before, sir.

12 Q. Doctor, if there was no need to use a minus or a
13 plus, there would be no reason, if there was no need to use a
14 minus, there would be no need to use a plus, would there,
15 sir?

16 A. I don't know what this means, sir.

17 Q. Doctor, did you understand my question?

18 A. I did indeed.

19 Q. You use a plus to indicate something is there, do
20 you not, sir?

21 A. Yes.

22 Q. And you use a minus to show that it's not there,
23 don't you, sir?

24 A. That might be the way he's using it, sure.

1 Q. Doctor, if you didn't intend to use either the plus
2 or the minus, if it didn't mean something to have the minus,
3 you wouldn't have to say four plus or one plus or two plus.
4 You would just say four or two or one, wouldn't you, sir?
5 The plus is there in order to distinguish and to
6 differentiate from minus, isn't it, sir?

7 A. No, sir.

8 Q. It isn't? Why is it there?

9 A. Because if it's not present, you could put a zero
10 there, sir, and that would mean that it's not present.
11 There's no such thing as a minus, there's no such thing as a
12 minus reflex.

13 Q. Excuse me, Doctor. Were you listening to my
14 question? What's the reason for showing the plus except to
15 show that it's there?

16 A. Correct.

17 Q. Yes. So if you didn't have some other symbol to use
18 like a minus, you wouldn't need to use the plus, would you,
19 sir? You could just say four, three, two, one, or zero, could
20 you not, sir?

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

22 Q. All right, Doctor.

23 (Plaintiffs' Exhibit 1792 marked for
24 identification.)

1 Q. Handing now Plaintiffs' Exhibit 1792, Doctor. This
2 is a report on Brady Workman dated July 20th, 1955, is it
3 not, sir?

4 A. Yes, it is.

5 Q. And Mr. Workman reports, according to Dr. Nestmann,
6 that on his chief complaints he feels weak, no get up and go,
7 muscles and bones ache, soreness in lower chest all the time,
8 gets drowsy often, and under present illness he hasn't been
9 well for five years starting out with a rash in 1950, isn't
10 that correct, sir?

11 A. That's what the record reads, sir.

12 Q. Doctor, he believes that when his legs started to
13 hurt in 1950 he believes they're worse now, doesn't he, sir?
14 Do you see that, sir?

15 A. If you're referring to the legs hurting, yes.

16 Q. Legs started to hurt in 1955. He believes they are
17 worse now. You see that, sir?

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

19 Q. If that's true, that's certainly not a regression
20 or a subsidence of this leg pain, is it, sir?

21 A. If this is accurate, sir, that's the case.

22 Q. And doctor,, he has the abdominal pain with him all
23 the time, does he not?

24 A. That's what the record reads, sir.

1 Q. And he has trouble getting his rest, he has to make
2 himself do anything. All he wants to do is lie about,
3 although he states he likes to work. He's dozed off while on
4 the job, and he has to fight sleep during the day a lot, is
5 that correct, sir, according to this report?

6 A. That's what the record reads, sir.

7 Q. He also has an inward nervousness that is present,
8 doesn't he, sir, according to this report?

9 A. He believes he has had an inward nervousness, yes,
10 sir.

11 Q. And, Doctor, where does it say he believes he has
12 inward nervousness present? This is a review of the doctor,
13 isn't it, sir? The doctor says "inward nervousness
14 present", doesn't he, sir?

15 A. No, if this is Brady Workman in paragraph one--

16 Q. Doctor, if you would refer to the last line on the
17 first page. Would you do that, Doctor?

18 A. It is on the first page, and it's past history.

19 Q. Doctor --

20 A. And I'm quoting accurately, sir.

21 Q. Doctor, excuse me. Would you allow me please to
22 tell to you refer to the system review, sir. In the past
23 history, Doctor, it indeed does say that he believes that
24 he's had an inward nervousness for four or five years.

1 Doctor, no problem about that, but I'm referring you to --

2 A. I thought there was, sir.

3 Q. -- The system review, sir, the doctor's review of
4 the systems. Do you see that, sir?

5 A. I do see it.

6 Q. He put down there mental and nervous, colon, inward
7 nervousness present, isn't that correct, sir?

8 A. That's what this record reads, sir.

9 Q. Doctor, the doctor also reports his deep tendon
10 reflexes to be two plus for the knee jerks, but that his
11 ankle jerks his triceps jerks and his biceps jerks are all
12 one plus, isn't that correct, sir?

13 A. That's what this record reads, sir.

14 (Plaintiffs' Exhibit 1793 marked for
15 identification.)

16 Q. Doctor, handing you Plaintiff's Exhibit 1795, it is
17 a report of Dr. Nestmann on --

18 MR. SEIGFRIED: That's 1793.

19 Q. 1793?

20 A. That's what I have, sir.

21 Q. Oh, really? 1793, and it's a report on Mr. Thomas
22 by Dr. Nestmann dated August 22nd, 1955, is it not, sir?

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

24 Q. His chief complaints according to this reports are

1 nervousness, aches and pains all over, especially on the left
2 side, headaches, constipation, and the rash, isn't that
3 correct, sir?

4 A. That's correct, sir.

5 Q. He reports that the nervousness started six months
6 after the explosion, doesn't he, sir?

7 A. That's what this record reads, sir.

8 Q. It says he's nervous all the time, correct, sir?

9 A. That's what the record reads, sir.

10 Q. And he sleeps, no particular thing upsets him, but
11 he sleeps poorly at times, insomnia pretty often?

12 A. That's what the record reads, sir.

13 Q. Aches and pains, which have been present for five
14 or six years nearly constantly. They ease up occasionally,
15 but worry him nearly all the time. He's never had any sure
16 relief. Isn't that what it says there also, sir?

17 A. That's what the record reads, sir.

18 Q. Headaches have been present for three or four
19 years, aspirin will give him relief, he has them mostly in
20 the forehead, may have them at any time. Is that correct,
21 sir?

22 A. That is correct, sir.

23 Q. He's had constipation for five or six years,
24 correct, sir?

1 A. That's what the record reads, sir.

2 Q. Of course, he was in the building, he washed down
3 the walls in the building just two or three days after the
4 accident, didn't he, sir?

5 A. That's what this record reads, sir.

6 Q. So it would have been some six years after his
7 exposure, and he's had this constipation problem for six
8 years, has he not, sir, five or six years?

9 A. Is that a question of relationship, sir?

10 MR. CARR: I wonder if you would read the question
11 to the witness again please.

12 (Court reporter read back the question.)

13 A. He has had constipation problems for five or six
14 years, yes, sir.

15 Q. Doctor, as far as the past history is concerned,
16 according to Dr. Nestmann the man admits that he was nervous
17 prior to the accident but not as badly as now, is that
18 correct also, sir. Do you see that, sir, on the bottom of
19 the page, the first page, third paragraph from the bottom,
20 Dr. Suskind. Do you see that?

21 A. Yes, I do, sir.

22 Q. Do you see that under the caption past history?

23 A. Yes, I see it.

24 Q. All right. On the next page under system review

1 it's pointed out that his nervousness started in 1945 on his
2 return from service where he had been for some two and a half
3 years, correct, sir?

4 A. That is correct, sir.

5 Q. As far as his reflexes is concerned he had four
6 plus knee jerks, but his other deep tendon reflexes were two
7 plus, were they not, sir?

8 A. Yes, sir.

9 (Plaintiffs' Exhibit 1794 marked for
10 identification.)

11 Q. Doctor, handing now Plaintiffs' Exhibit 1794, that's
12 a report on Gene Thomas, is it not, sir, dated June 22nd,
13 1955?

14 A. I see it, sir, yes.

15 Q. Doctor, his chief complaints are aching in the
16 shoulders, legs, back and neck, knees and elbows. In the
17 past he's had a swollen right ankle on occasion, correct,
18 sir?

19 A. Yes.

20 Q. He dates his -- the aching that he's described as
21 having started a month or two after he had the rash break out
22 following his exposure in March of 1949 in that building,
23 isn't that correct, sir?

24 A. No, sir.

1 Q. Doctor, are you reading under the present illness
2 paragraph?

3 A. I am, and it says he was exposed to a gas called
4 2,4-T in 1949, and I don't know a damn thing about a gas
5 called 2,4-T, sir.

6 Q. Doctor, do you think it's just possible that this
7 man is describing the same incident that everyone else
8 described that took -- started out early in March 1949?

9 A. I really can't be sure with that kind of statement.

10 Q. Doctor, I'm not asking for assuredness. I'm asking
11 isn't it possible that he's describing the same incident that
12 the other men have described? He dates it early, he says he
13 worked in the building for one year after the exposure, early
14 in March '49 he was exposed, one month later he broke out in
15 a rash. Isn't it possible, sir, that he's describing the
16 same incident that these others have described especially in
17 view of the fact, Doctor, in the third paragraph--

18 A. It's possible, sir.

19 Q. Excuse me.

20 A. It is possible, sir.

21 Q. Doctor, he describes in his past history that he
22 "has always had good health prior to accident"?

23 A. It's possible he's talking about that.

24 Q. Thank you, Doctor.

1 A. But I would be suspicious of it.

2 Q. All right, Doctor, you may be suspicious of it.

3 The record also shows that he's had the aching, that the rash
4 cleared up, and he says that he's not particularly nervous,
5 isn't that correct, sir? Last sentence, second paragraph
6 from the bottom, Dr. Suskind.

7 A. Yes, I see that, sir.

8 Q. Doctor, his deep tendon reflexes were all two plus,
9 weren't they, sir?

10 A. They were.

11 (Plaintiffs' Exhibit 1795 marked for
12 identification.)

13 Q. Doctor, handing you now what's been marked
14 Plaintiffs' Exhibit 1795, which is a one page report on Mr.
15 Miller dated July 27th, 1955, is that correct, sir?

16 A. Yes, that's what the record shows.

17 Q. It doesn't have with it the second page in which
18 most of these men the reflexes are noted, is that correct,
19 sir?

20 A. I only have one page, sir, yes.

21 Q. And so it would appear that we're missing a page on
22 this particular exhibit, correct, sir, on this particular
23 report rather?

24 A. I would have to assume that.

1 Q. And we don't know what his reflexes are then, do
2 we, sir?

3 A. No, we don't know that and other things, too.

4 Q. Doctor, he reports by way of chief complaints, does
5 he not, sir, that he has when he sits very long he has
6 trouble getting up, worse when he squats, his knees pop and
7 crack when he walks, arms and shoulders pop, too, he notices
8 dizziness and black spots when he climbs a ladder, trouble
9 with his chest, trouble breathing, libido has nearly
10 disappeared, and he averages one coitus now per month,
11 nervous, forgetful, tires out after a day's work, and he has
12 dermatitis more than five years and all of his teeth have
13 been lost because they have rotted, is that correct, sir, as
14 far as his present complaints are concerned?

15 A. These are his complaints as recorded.

16 Q. He states he was a good man until he was exposed to
17 2,4,5-T, does he not, sir?

18 A. It reads 2,4-T here as well, sir, yes.

19 Q. He states he was a pump mechanic, had to repair the
20 pumps, he was in the contaminated area for one hour per day
21 for one or two days per week, worked six hours per day on the
22 autoclaves?

23 A. That's what the record reads.

24 Q. It's apparent that he's referring to the accident,

1 is it not, sir, just as the other man was referring to the
2 accident?

3 A. I can't tell from this.

4 Q. Doctor, you can tell from it. He talks about
5 occasionally he worked six hours per day on the autoclaves,
6 contaminated area. The only thing that is missing is a five
7 in the 2,4,5-T, isn't that correct, sir?

8 A. No, sir. This doesn't state that he was in the
9 building in which the accident occurred.

10 Q. Doctor, it says he was a pump mechanic and had to
11 repair the pumps. He says he was a good man until he was
12 exposed to 2,4-T, " was in the contaminated area one hour per
13 day for one or two days per week, occasionally he worked six
14 hours per day on the autoclaves". Wasn't it a runaway
15 reaction in the autoclaves that we're concerned with, Doctor?

16 A. But I don't know when this was, sir.

17 Q. Doctor, could you answer my question please?

18 A. There was an autoclave in Building 41, right.

19 Q. Doctor, the exposure to the contamination caused
20 dermatitis in many of these men, did it not, sir?

21 A. Would you read the question please.

22 (Court reporter read back the last question.)

23 A. I'm not sure I can answer that question the way
24 it's actually worded, sir.

1 Q. Why not, Doctor?

2 A. Because there are -- there were autoclaves in other
3 buildings, and I'm not sure what autoclaves he's talking
4 about, and there's no indication here that this is the
5 autoclave, in which there was a runaway reaction.

6 Q. Doctor, that isn't the question I asked you. Would
7 you like to hear the question again? I didn't ask you that,
8 sir.

9 A. Yes, you did.

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

12 (Court reporter read back the question.)

13 A. Again I'm not sure I can answer that question the
14 way it's worded, sir.

15 Q. What's wrong with the way it's worded, Doctor?

16 A. As I have indicated, sir, what contamination you're
17 talking about, are you talking about Building 34.

18 Q. The contamination from--

19 A. -- Where there was 2,4,5-T made, are you talking
20 about the runaway reaction.

21 Q. I'm talking about, Doctor?

22 A. What are you talking about?

23 Q. The contamination from the accident.

24 A. Well, I'm not sure this represents the accident.

1 Q. Doctor, please bear with me. I'm talking about,
2 you want to know what my question is talking about, my
3 question said exposure to the contamination, Doctor. The
4 contamination is from the accident or the contamination in
5 the material, whatever it is, exposure to that contamination
6 caused dermatitis in many of those men, did it not, sir?

7 A. It caused dermatitis, yes, sir.

8 Q. Doctor, this man states that he was in the
9 contaminated area for a hour, doesn't it, sir, for one or two
10 days and then six hours per day occasionally?

11 A. That's what the record reads, sir.

12 Q. It also says his face was mostly involved with the
13 dermititis, doesn't it, sir?

14 A. That's what the record reads.

15 Q. It also says the dermatitis has been present for
16 more than five years, doesn't it, sir? Number 8 in chief
17 complaints, Doctor.

18 A. Yes, that's what the record reads, sir.

19 (Plaintiffs' Exhibit 1796 marked for
20 identification.)

21 Q. Doctor, now 1796 is an August 6, 1955 report
22 referring to Mr. Smith, is it not, sir?

23 A. That's what the record reads, sir.

24 Q. His chief complaints were aches and hurts all over

1 sleepy all the time and worn out all the time, correct, sir?

2 A. That's what the record reads, sir.

3 Q. He also states that he's not been well since he
4 broke out at the plant, isn't that correct, sir?

5 A. That's the way it's stated in this letter.

6 Q. He was across the street according to this report
7 when the autoclave let go, isn't that right, sir?

8 A. That's what this record reads, sir.

9 Q. He stated that he believes the contamination came
10 from the air coming down upon him, correct, sir?

11 A. That's how it's stated here, sir.

12 Q. Three months after the exposure he noticed the
13 breaking out all over his body, is that right, sir?

14 A. That's what the record reads, sir.

15 Q. He's had trouble with his eyes, but they've not
16 been treated, isn't that also correct, sir?

17 A. That's how this record reads, sir.

18 Q. This record also reads, does it not, sir, according
19 to Dr. Nestmann's report that the aching started two or three
20 years ago and is getting worse, gets more severe all the
21 time?

22 A. That's what the complaint is, sir, yes.

23 Q. And also reports that for some two, two and a half
24 years ago he started getting tired out all the time and this,

1 too, is getting worse?

2 A. That's what the complaint reads, sir.

3 Q. His past -- his history is he's been in perfect
4 health until June of 1949, correct, sir?

5 A. According to this person, yes.

6 Q. Doctor, his deep tendon reflexes that are reported
7 here are -- were all four plus, were they not, sir?

8 A. Yes, that's how they're recorded here.

9 Q. Now, Doctor, these complaints that these men have
10 had as shown in these reports that we've just gone through
11 are similar in nature and number to a great degree to the
12 complaints that we've went through of Dr. Nestmann's as part
13 of 1779, isn't that correct, sir?

14 A. There are some similarities, sir, yes.

15 Q. All right. Doctor, and you testified after Dr.
16 Nestmann testified at Nitro at the workmen's compensation
17 hearing, didn't you, sir?

18 A. I'm not sure of Dr. Nestmann's -- Dr. Nestmann did
19 testify, sir?

20 Q. Yes, indeed he did.

21 A. Okay. And when was that, sir?

22 Q. We previously established that he testified in the
23 case of Mr. Willard -- no, that was a report?

24 A. I thought, sir, that when I said --

1 Q. Cecil Cunningham, do you recall that, sir?

2 A. Yes, but I thought that you told me that when I
3 recall that he testified you didn't -- you said that how do
4 you know? That's early in your questioning me.

5 Q. Yes, Doctor.

6 A. You even accused me of having poor recollection.

7 Q. About Nestmann testifying, Doctor?

8 A. About Nestmann testifying, yes, sir.

9 Q. Doctor, if I accused you of having poor
10 recollection about his testifying, I most certainly apologize
11 to you, Dr. Suskind.

12 A. Thank you, sir.

13 Q. And he indeed did testify, didn't he, sir?

14 A. Yes, indeed he did.

15 Q. But he testified, I think we've established that he
16 testified as to Mr. Young, and don't hold me to that, I don't
17 remember myself, but we know that he's testified about Mr.
18 Cunningham, don't we, sir?

19 A. Yes, I believe he did.

20 Q. And we, of course, have the benefit of a transcript
21 of at least part of his testimony with relation to Mr.
22 Cunningham, don't we, sir?

23 A. Have I seen that, sir?

24 Q. Doctor, you referred me to it earlier. You recall

1 you said he testified Mr. Cunningham?

2 A. Correct.

3 Q. You wanted to talk about it, and I said we'll get
4 to that later. You recall that, sir?

5 A. Okay.

6 Q. All right. And, Doctor, you know that Mr. Nestmann,
7 Dr. Nestmann reported to the Workers' Compensation Commission
8 that he did not know the cause of the severe psychoneurosis
9 in the case of Mr. -- Of the moderately severe
10 psychoneurosis, do you or don't you, sir? Since you referred
11 to Mr. Cunningham's case with Dr. Nestmann's associates, I
12 take it you have read his testimony?

13 A. Yes, I believe I've read sections of it, sir.

14 Q. And, Doctor, you know that he testified that the
15 man had a moderately severe psychoneurosis, don't you, sir?

16 A. Yes, I believe he said he had.

17 Q. You also know that he says cause not known and when
18 it developed not known, didn't he, sir?

19 A. I'm not altogether sure that I --

20 Q. Let me help you.

21 A. Okay.

22 Q. Right there, sir.

23 A. That's what he said in this report, sir.

24 Q. And, Doctor, we previously established that he

1 testified in the case of Mr. Willard as to at least your
2 interpretation of Mr. Willard -- of Dr. Nestmann's reference
3 to Mr. Willard, do you recall that, sir?

4 MR. HEINEMAN: Excuse me, Your Honor.

5 A. I do indeed.

6 MR. HEINEMAN: May counsel approach the bench?

7 THE COURT: Sure.

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

10 MR. HEINEMAN: Your Honor, I would object to Mr.
11 Carr showing the witness documents which aren't even marked
12 or identified. I mean we have no idea what it is he's
13 showing him or what page he's referring him to.

14 MR. CARR: I'll be glad to mark them.

15 THE COURT: Why don't you mark them.

16 MR. HEINEMAN: Let me ask you this. What you just
17 showed him was the Nestmann testimony before the commission
18 on whom?

19 MR. CARR: What you've given me on Cecil
20 Cunningham.

21 MR. HEINEMAN: Cecil Cunningham, okay, and the page
22 you just showed him was what?

23 MR. CARR: Page 23.

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

1 Q. Doctor, the page that I just showed you was Page 23
2 from Plaintiffs' Exhibit 1797, was it not, sir? Was it not,
3 sir? You see the number 23 at the bottom of the page there?
4 No, I'm sorry, at the top of the page, I misdirected you.

5 A. Sorry.

6 Q. Right here, Doctor, 23, you see that? Excuse me,
7 Doctor. My question is referring, Doctor, to the Page 23.
8 Do you see that, sir?

9 A. Yes, I do.

10 Q. Yes. That's also microfilm page numbered 9418309,
11 is it not, sir?

12 A. That is that page, sir, yes.

13 Q. Yes. Doctor, we have had the benefit of Dr.
14 Nestmann's report with regard to Mr. Willard that was dated
15 in 1953, was it not, sir? Do you recall that, sir, report
16 about Paul M. Willard was dated in 1953?

17 A. Yes, sir, I recall that, sir.

18 Q. This testimony is dated June of 1956, is it not,
19 sir, right there, sir?

20 A. Yes, sir.

21 Q. His opinion as to Mr. Willard was as we've
22 established this morning that the -- Mr. Willard's
23 psychoneurosis -- when he was talking about Mr. Willard's
24 psychoneurosis, he was quote " talking about the results of

1 that incident", was he not, sir?

2 A. Yes.

3 Q. Yes. Now, three years later when he was talking
4 about Mr. Cunningham's psychoneurosis, he says cause unknown,
5 doesn't he, sir?

6 A. No.

7 Q. Doctor, didn't we just read, didn't you just agree
8 that he said that, cause unknown?

9 A. In that area that's what he said, sir.

10 Q. Excuse me. Didn't he say I think he has a
11 moderately severe psychoneurosis, cause not known?

12 A. That's one statement he makes. He made other
13 statements, too, sir.

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

16 THE COURT: Yes, you may.

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

19 MR. HEINEMAN: Your Honor, I've noticed a number of
20 times that Mr. Carr has approached the witness, and as he
21 does so, he raises the level of his voice, and Mr. Carr knows
22 that the witness is wearing a hearing aid. I'm sure the Court
23 has also noticed that when Mr. Carr does that, the witness
24 recoils and reaches for the volume control on his hearing

1 aid. I would appreciate a commitment from Mr. Carr if he's
2 going to approach the witness that he lower his voice to the
3 point where the witness doesn't have to recoil in pain
4 because he's got his hearing aid turned up so he can hear him
5 when he's sitting back at his table. I object to his doing
6 that, and I wish he would stop it.

7 MR. CARR: Your Honor, the suggestion he's making
8 that I raised my voice as I approached the witness is
9 absolutely untrue. My voice is the same level wherever I am
10 talking to and asking questions of the witness. I'm
11 certainly aware of the witness doing it, and if I can
12 remember, counsel, I would be more than happy. I do not want
13 to cause this man any discomfort in any way. I certainly
14 would not -- it would be a terrible thing for me to do if as
15 you've suggested, I'd be a terrible person if as you've
16 suggested I was deliberately raising my voice in order to
17 cause this man discomfort because of his hearing aid. I
18 resent your statement about me in that respect. I may want
19 to cause the witness discomfort because of his answers, but
20 only of a mental way, counsel, and not of a physical way, and
21 I do resent your statement, and I most certainly will make
22 every effort that I can to lower my voice, but if I do lower
23 my voice, then you may not hear me, but I'll take that risk.

24 MR. HEINEMAN: Ill be happy -- I'll be happy. I

1 would like to be able to hear you myself, but there have been
2 a number of occasions that I have observed when you have
3 indeed raised your voice at the witness' chair. You may not
4 have recalled at the time that he had a hearing aid, but you
5 have seen him on a number of occasions pull back and reach
6 for his pocket when you approach him like that, and all I'm
7 doing is asking that you please refrain from raising your
8 voice when you approach him.

9 MR. CARR: Counsel, I don't raise my voice any
10 differently with this witness than any other witness when I
11 approach. My voice, I hope, is the same with every witness.
12 Now, I'm sorry, and I'll certainly tell the doctor that I'm
13 sorry for causing any discomfort. It has been inadvertent on
14 my part, and I resent your statement that I'm doing it on
15 purpose.

16 MR. HEINEMAN: I didn't say you were doing it on
17 purpose. You obviously have a sensitive point there, because
18 I didn't say that.

19 MR. CARR: Yes, I do have a sensitive point.

20 THE COURT: Make sure your voice-- we've got to his
21 a compromise somewhere -- keep your voice loud enough so that
22 the jurys hears in the back of the jury box so try to reach a
23 balance on that point.

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

1 Q. Dr. Suskind, he does state when asked the direct
2 opinion as to his opinion of the degree of disability of
3 Cunningham, he says he has no degree, he has a moderately
4 severe psychoneurosis, cause not known, when it developed not
5 known; doesn't he say that, sir?

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

7 Q. Now, in his report relating to Mr. Cunningham, he
8 does know and has stated that he knows when the nervousness
9 started, didn't he, sir? If you will look at 1779, sir, he
10 states there, does he not, that the nervousness started in
11 February 1950 and that between February and May -- do you
12 have it, Dr. Suskind, the second report of Exhibit 1779. Are
13 you there, Doctor?

14 A. I have it.

15 Q. You see where he states --

16 A. Where are you referring to, sir?

17 Q. The second paragraph under the heading present
18 illness.

19 A. Okay.

20 Q. Started to have trouble with nervousness in
21 February 1950 and left while after that between February and
22 May he started with his legs and chest hurting. Whenever he
23 had a bad nervous spell, he would get the trouble with his
24 legs and chest. In recent weeks he's having fewer nervous

1 spells, but admits he stays nervous all the time?

2 A. Yes, I see that, sir.

3 Q. He dates the nervousness as having started in
4 February of 1950 in this report, doesn't he, sir?

5 A. The patient does, Cunningham does, yes.

6 Q. Isn't this Dr. Nestmann's report?

7 A. This is Dr. Nestmann's report of what Mr.
8 Cunningham told him, sir.

9 Q. Doesn't the patient also tell him that he wasn't
10 nervous before the accident? Third paragraph from the bottom
11 under the words past history, Doctor.

12 A. Yes, that's what this record reads, sir.

13 Q. So Dr. Nestmann indeed had a record of when
14 according to the history the man's nervousness started, did
15 he not, sir?

16 A. According to the history.

17 Q. Now, he had a history from Mr. Willard as to when
18 his nervousness started, didn't he, sir?

19 A. I believe Mr. Willard gave him a history, sir.

20 Q. Mr. Willard said his problems started after the
21 accident, too, did he not, sir?

22 A. He related it to the accident.

23 Q. Yes. And Dr. Nestmann indicates to Mr. Willard,
24 said when he's talking about the psychoneurosis, he's talking

1 about the results of that incident, didn't he, sir?

2 A. In a general way the results, the result of the
3 incident.

4 Q. Did he have any more --

5 A. I'm sorry.

6 Q. I'm sorry, did you finish your answer?

7 A. No.

8 Q. Dr. Suskind --

9 A. The result of the incident, yes.

10 Q. Does Dr. Nestmann have any more or less information
11 in 1953 when he said Mr. Willard's psychoneurosis started as
12 a result of the incident, did he have any more information
13 about Mr. Willard than he had about Mr. Cunningham?

14 A. I don't know.

15 Q. Doctor, you have both records in front of you. You
16 have Mr.--

17 A. All I can do is judge by that.

18 Q. Doctor, you have Dr. Nestmann's report on Mr.
19 Willard, do you not, sir?

20 A. I have it somewhere, yes.

21 Q. And you have -- well, we been referring to it for
22 sometime, Doctor.

23 A. Sure, it's here somewhere, sir.

24 Q. And it does indeed refer to his problem, which we

1 went through at considerable length this morning as starting
2 with the accident, isn't that correct, sir?

3 A. Mr. Willard related it to the accident, sir.

4 Q. And Dr. Nestmann said when he's talking about the
5 psychoneurosis, he's talking about the results of the
6 incident, correct, sir?

7 A. He is.

8 Q. Yes. Doctor, did he have any more information about
9 Mr. Willard, about when his psychoneurosis started, than he
10 had about Mr. Cunningham when Mr. Cunningham's psychoneurosis
11 started according to these two reports, sir?

12 A. I don't know whether he knew when it started, sir.

13 Q. Doctor, my question is according to these two
14 reports, Dr. Suskind, did he have any more information about
15 Mr. Willard than he had about Mr. Cunningham?

16 A. If you're just referring to these two reports, I
17 have to take these at face value.

18 Q. That's correct.

19 A. And they appear to be similar.

20 Q. Yes. And, Doctor, the cause appears to be similar,
21 doesn't it, sir?

22 A. No, sir.

23 Q. Doctor, didn't Mr. Willard's psychoneurosis, didn't
24 he tell us according to your interpretation of the report

1 that he's talking about the results of the incident?

2 A. No, sir.

3 Q. Doctor, we went through that. Your testimony is
4 he's talking about the results of the incident when he's
5 talking about the psychoneurosis. You see that, sir? He's
6 talking about the -- I'm sorry, your --

7 A. No, that's okay.

8 Q. -- Hearing aid. It's not okay, Doctor. He's
9 talking about the results of that incident, isn't he, sir?

10 A. Dr. Nestmann is, yes.

11 Q. Yes, that's what I said, Doctor.

12 A. Yes, sir.

13 THE COURT: Mr. Carr, is this a good point for a
14 short break?

15 MR. CARR: Yes, Your Honor.

16 THE COURT: We'll take a short recess at this time.
17 The admonishments that I gave you earlier will apply to this
18 break also. Court's in recess.

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

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

21

22 Q. Dr. Suskind, the problems that developed in these
23 men that we have discussed thus far these were problems that
24 could be characterized as of an insidious nature, could they

1 not, sir?

2 A. Yes, I believe that at one point we've even used
3 the term, but I -- insidious has a variety of meanings.

4 Q. Well, if you were to use it with relation to TCDD,
5 how would you mean it, in what way would you use the term
6 insidious?

7 A. Well, insidious would mean kind of sneaky and
8 difficult to follow and coming on when one hardly expects
9 it. There are a variety of meanings attached to the word
10 insidious and in this instance I think what we intended to
11 say is that they were somewhat difficult to understand, cause
12 we had never encountered them before.

13 Q. Well, insidious doesn't mean difficult to
14 understand, does it, sir?

15 A. No, but in this instance I think we were -- we were
16 not, at least in 1949 and 1950 we didn't know what the
17 pathological basis of this --

18 Q. But later on you learned as early as 19-- or late
19 as 1953 you learned, we've gone through this report, haven't
20 we, sir? We've gone through your 1953 report, have we not,
21 sir?

22 A. Yes, sir.

23 Q. So you learned the nature, you learned the
24 similarity, you've outlined the number of complaints that

1 each person had, you drew an outline of it by 1953, did you
2 not, sir?

3 A. Oh, yes, but we didn't know origin, sir.

4 Q. You didn't know what, sir?

5 A. Origin, we had no idea what the origin was.

6 Q. You didn't know that these problems came from the
7 contamination that they were exposed to, the chemicals they
8 were exposed to?

9 A. We didn't know what the contamination was.

10 Q. I understand that. You didn't know the name of it
11 by 1953. You knew it was there, you just hadn't labeled it.
12 You knew it was there, you knew what it did, you knew the
13 effects on these men that you followed for that period of
14 time, saw in 1953, isn't that right, sir?

15 A. No, not really, sir.

16 Q. Well, Doctor, didn't we go through your 1953
17 report?

18 A. Yes.

19 Q. At great length, and didn't you describe just those
20 very things, sir? Haven't we done that?

21 A. What are you referring to in the '53 report?

22 Perhaps you can ask me to clarify it, sir.

23 Q. No, I'm not asking to clarify it. Have you not in
24 your 1953 report, did you not purport to come down and

1 describe the results of the exposure, the types of exposure,
2 correlate the present clinical problems, results of your
3 hygiene? Didn't you do all those things in your and intend
4 to do all those things in your 1953 report?

5 A. Yes, this was an attempt to get a --

6 Q. Now, Doctor, as far as -- as far as the insidious
7 nature is concerned, your description of the word insidious
8 would basically mean treacherous, wouldn't it, sir?

9 A. I'm sorry?

10 Q. Would you not mean to describe something as
11 insidious as treacherous, it has a gradual and cumulative
12 effect, it creeps up on you without you knowing it until it's
13 too late or until certain signs have shown up?

14 A. No, sir. No, sir.

15 Q. Doctor, were you -- did you use the word insidious
16 in some way?

17 A. Yes, I believe we did.

18 Q. When was that, sir?

19 A. In one of the reports here we used the word
20 insidious.

21 Q. And, Doctor, you would use the word insidious in
22 the -- in the sense that it's used ordinarily and in the
23 dictionary sense, wouldn't you, sir? Unless you had a special
24 meaning for it, you would use it in -- you'd point out the

1 special meaning, wouldn't you, sir?

2 MR. HEINEMAN: Objection, it's been asked and
3 answered.

4 THE COURT: Objection is overruled.

5 A. Well, I can only tell you what I felt the use of
6 the word insidious would have meant at the time.

7 Q. Well, would you describe -- you were talking about
8 a disease, weren't you, sir, you were a doctor using that
9 word describing a disease, weren't you, sir?

10 A. No, we were really talking about a pattern of
11 symptoms and findings.

12 Q. All right, Doctor. Once the patterns and symptoms
13 and findings have become apparent it is no longer insidious,
14 is it, sir?

15 A. No, it could still be, it could still be.

16 Q. In what sense, Doctor?

17 A. Well, you know, if others were exposed to such
18 materials, and they developed the pattern of symptoms and
19 findings, their problem would be insidious as well.

20 Q. Well, granted, but the chemical would no longer be
21 insidious. You know that it will do that based upon your
22 earlier examination of the workers?

23 A. No, we didn't know what the chemical was. We didn't
24 know what the contaminant was.

1 Q. Doctor, you're now playing with me again--

2 A. No, I'm not, sir, honestly.

3 Q. You know we've established that you did know there
4 was a contaminant, you didn't put a name on it. We just did
5 that a few minutes ago. You knew there was something in the
6 chemical causing these problems. You don't have to have a
7 name on it, you don't have to have it isolated to the very
8 chemical formula to know there's something in there that's
9 hurting these men, isn't that right, Doctor?

10 A. No, it is right.

11 Q. It is right, isn't it?

12 A. No.

13 Q. You did know there was something --

14 A. No.

15 Q. Didn't you know there was something in these
16 chemicals that was hurting these men?

17 A. There was something in the process, sir.

18 Q. That was hurting these men, that was in the
19 chemicals, isn't that correct, sir?

20 A. Now, what it was though --

21 Q. Doctor, my question is you knew there was something
22 in the chemical that was hurting these men, did you not, sir?

23 A. Well, there were chemicals, sir.

24 Q. In the chemicals that were hurting-- was hurting

1 these men, did you not, sir?

2 A. That might hurt these men, yes.

3 Q. Doctor, is that a yes to my question that you knew
4 there was something in the chemicals that were hurting the
5 men, not might, not maybe, not perhaps, but were in fact
6 doing it. You knew that in 1953, you knew that in '49, you
7 knew that in '50, did you not, sir?

8 A. No, not really.

9 Q. You didn't know that these men were being hurt,
10 sir, by something in the chemicals?

11 A. Yes.

12 Q. You did know that?

13 A. Some of the men were, some of the men were, sir.

14 Q. Doctor, I'm not quarrelling with that. You knew
15 that some of these men, the 36 that you saw and others that
16 have been reported to you for being injured, damaged by
17 something in the chemicals, you did know that, didn't you,
18 sir?

19 A. No, sir.

20 Q. You did not know that?

21 A. No, it was 35 out of the 36 that had problems, sir.

22 Q. No, there were 36 out of 36 that had problems.

23 A. No, sir.

24 Q. One person didn't have the chloracne, he had the

1 other problems?

2 A. No, he did not, sir. He was just a complainer,
3 sir.

4 Q. Doctor, you didn't say he was just a complainer.
5 You gave us his results. You're now saying that he was just
6 a complainer. You gave the results, you said he was telling
7 the truth, you did not believe he was lying, aches and pains
8 in the knees, lumbar area five months duration, nervousness,
9 loss of fatigue, loss of vigor and fatigue, those are all the
10 things that you said, and you put the word complainer with a
11 question mark behind it, didn't you, sir?

12 MR. HEINEMAN: Excuse me, Doctor.

13 A. Yes, indeed, and you just said I didn't say he was
14 a complainer, and I certainly did, sir, and it's on Page 39,
15 and I think that what we need here is some --.

16 Q. Doctor, I just read you--

17 THE COURT: Doctor, Doctor, Doctor, wait a second.
18 There was an objection.

19 THE WITNESS: I'm sorry, I didn't hear.

20 MR. HEINEMAN: May counsel approach the bench,
21 Judge.

22 THE COURT: Yes, you may.

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

1 MR. HEINEMAN: Now, I want to object to Mr. Carr's
2 question, which I gather has already been answered at this
3 point.

4 THE COURT: It sounds like it has been.

5 MR. HEINEMAN: But nevertheless for the record, Mr.
6 Carr's -- in the premise of his question said to this
7 witness, now, you didn't tell he was lying, the one who did
8 not have chloracne, but who had the other -- complained of
9 other things, and that's Mr. Kyle. Now, Mr. Carr has already
10 told the Court on the record here that Mr. Kyle is one of the
11 people that the witness said was a liar. Now, it seems to me
12 it's clearly inconsistent for Mr. Carr to make that
13 representation to the Court and yet to question this witness
14 and say that he never said the man was a liar. He clearly
15 did, and I object to it as misleading.

16 MR. CARR: I'll be glad to straighten it out, Your
17 Honor.

18 THE COURT: Fine.

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

20 Q. Dr. Suskind?

21 A. Yes.

22 Q. Mr. Heineman reminds us that you described Mr. Kyle
23 as a liar. Did you do that, sir?

24 A. Well, I said that he was not accurate, sir.

1 Q. Doctor, there's a big difference between not being
2 accurate and being a liar, isn't there, sir? Did you call
3 this man a liar or not?

4 A. If you have to use that term, sir --

5 Q. That's what I'm asking you, Doctor. Did you call
6 this man a liar or not?

7 A. I don't like to use it, but if you want to use it,
8 you can. This man was not telling the truth.

9 Q. All right, Doctor. Then he was a liar, wasn't he?

10 A. Well, he would have been either in error or he
11 might be lying.

12 Q. Well, Doctor, now you're saying he might be lying.
13 Was he lying or not in your judgment, sir?

14 A. If you want to use that term--

15 Q. No, Doctor--

16 A. I will use it, too, sir.

17 Q. I'm asking you a point blank question, sir. You
18 said he might be lying or he would be inaccurate. Was he a
19 liar or not, Doctor, in your judgment?

20 A. He was not telling the truth, sir.

21 Q. Then it is your judgment that he was a liar?

22 A. To use your terminology, yes, sir.

23 Q. Doctor, he was a liar, and you based that upon the
24 fact that you found that he did not have chloracne and that

1 you considered him to be a complainer, is that right, sir? Is
2 that right, sir?

3 A. Yes. And at the time we interviewed him, he seemed
4 very anxious to impress us with his other symptoms, sir.

5 Q. Doctor, haven't you got him confused with somebody
6 else?

7 A. No, I'm not.

8 Q. You didn't say he was anxious, did you, sir, to
9 impress you with his symptoms? You used that language
10 describing somebody else, Doctor.

11 A. Yes, we have.

12 Q. Would you look at Page 32. You didn't say he seems
13 anxious to impress us with his symptoms, did you, sir?

14 A. Not specifically in this instance, sir.

15 Q. All right, Doctor. And you did describe him as
16 having present complaints of pains, didn't you, sir?

17 A. We say he claims that, in all instances he claims
18 that.

19 Q. Yes, that's correct, sir.

20 A. Okay.

21 Q. You said that --

22 A. He turned out --

23 Q. Doctor, you originally earlier said that doctors
24 use the word claim when they're describing what the people

1 complain about, do you recall that, sir?

2 A. Okay. Correct.

3 Q. All right. Then we can't believe that there's any
4 unpleasant or improper context when your doctors use the word
5 claims, can you, sir? Doctor, did you hear my question and
6 do you understand it?

7 A. Yes, I understand your question, sir.

8 Q. Would you answer it please, sir.

9 THE COURT: Doctor, please answer the question.

10 A. Yes, sir. In this instance I would say that the
11 use of the word claims as often as it has been used here
12 indicates that there might have been some question about,
13 there might have been some question about the accuracy of
14 those claims, sir.

15 Q. Doctor, we won't even quarrel with there might have
16 been some question about the accuracy of those claims, sir.
17 That's a far cry from saying the man is a liar, isn't it,
18 sir?

19 A. No, I think --

20 Q. You think saying there might be some doubt as to
21 the accuracy of his claims is equivalent to saying the man is
22 a liar? Do you, Doctor?

23 A. No.

24 Q. All right, Doctor. But that's what you said about

1 the man in your report in '53, isn't that correct?

2 A. We said he was a complainer.

3 Q. Yes, you did?

4 A. Okay.

5 Q. And we established --

6 A. And you called him, you want me to call him a liar,
7 I'm calling him a liar, sir.

8 Q. Doctor, what gave you the idea that I want you to
9 call this man a liar?

10 A. Because that's the way you wanted it termed. He
11 was --

12 Q. Doctor, what I want you to do is testify to the
13 truth in this matter. If you say the man is a liar, then say
14 so. Don't just say he was inaccurate or that his claims
15 appeared to be inaccurate. If you mean to describe the man as
16 not telling the truth or as a liar, please do.

17 A. I'm doing so.

18 Q. But I'm not suggesting to you the man is a liar.

19 A. Mr. Carr, I'm doing so.

20 Q. All right. Now, Doctor, you did not do so,
21 however, in your report in 1953, did you, sir?

22 A. One doesn't do that in a report, sir.

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

1 THE COURT: Doctor, respond to the question that's
2 been asked.

3 A. We did not do it in the report.

4 Q. Doctor, what you did in the report was say that he
5 had these, that he said he had these problems and you called
6 him a complainer, didn't you, sir?

7 A. That ws a polite way to say it, sir.

8 Q. Doctor, would you answer my question please.

9 A. I am answering it, sir.

10 Q. You called him a complainer, did you not, sir?

11 A. I did call him a complainer.

12 Q. Now, being a complainer, Doctor, one can be a
13 complainer without being a liar, can he not, sir?

14 A. That's quite true.

15 Q. Now, Doctor, the word complainer that you use on
16 Page 39 you didn't even say he was a complainer, you said
17 complainer, question mark, didn't you, sir?

18 A. Again we were being discreet, sir.

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

21 THE COURT: Doctor --

22 A. Yes, there's a question mark after it.

23 Q. Now, Doctor, back to the problems that these
24 workers had. These workers with the exception of the man

1 that you say was lying about his problems, they all had
2 similar problems from this exposure to this contaminant, did
3 they not, sir?

4 A. No, sir.

5 Q. Doctor, didn't we go through it a dozen times and
6 establish the problems these people had from their exposure
7 to the contaminant?

8 A. We have discussed them, yes.

9 Q. Doctor, we more than discussed them, we've
10 established the problems that they had according to your 1953
11 report, did we not, sir?

12 A. I think we have.

13 Q. Yes. And, Doctor, these problems were then
14 apparent, were they not, sir?

15 A. They were what, sir?

16 Q. They were apparent, weren't they, sir?

17 A. If you're saying they apparently had problems, yes,
18 sir.

19 Q. Well, the problems were apparent, you could see the
20 problems on their skin, and you talk to them and they tell
21 you the problems about the aches and pains and the loss of
22 vigor and other problems. Those thing are no longer hidden
23 if they're talking about them, are they, sir? They're no
24 longer sub rosa, they're out in the open, they are apparent,

1 aren't they, sir?

2 A. No, sir.

3 Q. You don't think they're apparent when these people
4 are talking about them?

5 A. No, sir.

6 Q. What do you think they are, Doctor? Did they --
7 were they not talking about their problems or were they
8 coming out and when you asked them, they were telling you
9 exactly the problems they had. Which was it?

10 A. As we discussed previously, sir, you asked me weeks
11 ago about who in these -- among these people we felt really
12 had problems, and I think I had actually gone over that list
13 with you.

14 Q. Yes, Doctor, and didn't you agree that 90 percent
15 of these people, 93 percent of these men continued to have
16 these complaints, these clinical symptoms, if you will?

17 A. I didn't agree, sir. Those are your marks.

18 Q. Dr. Suskind, how many times have we gone through
19 the very same question on that exhibit? How many times have
20 we established, March 7th, 1986, Page 51, according to my
21 interpretation of the records, my records, 27 out of 29 had
22 these symptoms. How many times do we have to establish
23 that? You do recall testifying that way, don't you, sir?

24 A. Is that what I said. Sir?

1 Q. Doctor, don't you recall saying it time and time
2 again? We went through this same thing, and even one time I
3 said, Doctor, now let's establish it one last time, and I
4 won't have to do it again. Do you recall that, sir?

5 A. No, I do not, sir.

6 Q. You don't recall that?

7 A. No, I do not.

8 Q. You don't recall saying that 27-- your
9 interpretation 27 out of 29 of these men had these symptoms?

10 A. They had those symptoms, which are complaints.

11 Q. Doctor, my question is--

12 A. They don't have to be accurate.

13 Q. My question is, Doctor, don't you recall testifying
14 in this case on March 7th, 1986 that according to " my
15 interpretation of my records 27 out of 29 had these
16 problems".

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

19 THE COURT: Yes, you may.

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

22 MR. HEINEMAN: Mr. Carr is using the word games
23 again with the witness, your Honor. The first time he's
24 talking about real problems, how many of them had real

1 problems, and then he switches over to that exhibit, which --
2 and then he talks about complaints.

3 MR. CARR: The witness is the one that switched it.
4 He said that was your interpretation when I asked him--

5 MR. HEINEMAN: No, you understand, of course, he
6 didn't ask you about the exhibit, you asked him about the
7 exhibit. Now, when he gets to that exhibit, he went to
8 complaints, and now he's back to asking this witness about
9 the people on that exhibit having problems. All right. He
10 keeps switching back from problems to complaints to problems
11 when he knows exactly the differentiation that this witness
12 makes with respect to those two things. He's trying to
13 entrap him into some sort of admission when the witness has
14 made very clear his views, yes, those people had complaints,
15 but they're not real problems except in a certain number of
16 cases that he delineated, and I object to Mr. Carr's question
17 as an attempt to distort and twist the witness' prior
18 testimony.

19 MR. CARR: It's clear the witness is looking at that
20 board and saying didn't 27 out of 29 had these symptoms and
21 these problems. He said according to your records, yes, and
22 I'm simply pointing out that it's according to his
23 interpretation.

24 THE COURT: We have gone through this a number of

1 times. Every time that exhibit comes up, we go through this
2 same thing. This witness has finally ultimately said that a
3 number of times. You may, if you wish, ask him to assume
4 that he said it.

5 MR. HEINEMAN: Said what, sir?

6 THE COURT: Because I'm really tired of this game
7 playing with regard to this witness. Objection is overruled.

8 MR. HEINEMAN: Said what, sir?

9 THE COURT: You know very well, you know very well
10 what the context of this whole thing what he said. Objection
11 is overruled. You may proceed.

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

13 Q. Doctor, would you look at your testimony here. See
14 where it says there were 27 out of 29 had these symptoms,
15 didn't they, sir, and you said according to your record, yes,
16 sir, and then I said, Doctor, according to whose
17 interpretation of these records, these were symptoms
18 according to whose interpretation, and didn't you say
19 "according to my record and my interpretation" end of quote?
20 Didn't you say that?

21 A. Yes, I did, sir.

22 Q. All right, Doctor. Now, Doctor, these symptoms,
23 these 27 out of 29 people were ones that you recorded, they
24 were discovered by you, they were reported by you, were they

1 not, in your 1953 report, sir?

2 A. They were recorded by me, yes.

3 Q. And, Doctor --

4 A. By my group at least, sir.

5 Q. When they became recorded, they were at least to
6 anybody that could read the record they were apparent, were
7 they not, sir?

8 A. No.

9 Q. Doctor, were these 27 out of 29 men had these
10 symptoms in 1953, wouldn't that be apparent from anyone
11 reading the record just as you read it, just as you
12 interpreted it?

13 A. I would say no, sir.

14 Q. Is your -- is your record unclear or do you
15 summarize these symptoms on page, starting on Page 34, you
16 summarize them, don't you, sir, present complaints, and you
17 call them symptoms in other places, clinical symptoms.
18 That's pretty clear, you can read that, can't you, sir?

19 A. I record them on Page 5 as clinical symptoms and to
20 be more accurate these should be clinical complaints, sir.

21 Q. Doctor, I don't want to cross examine you again on
22 that point. We've gone over it so many times I simply don't
23 want to cross examine you again--

24 A. For the sake of accuracy, sir--

1 Q. My question now, Doctor -- you can do that when Mr.
2 Heineman questions you, Dr. Suskind.

3 A. Okay.

4 Q. My question now, Doctor, is that once you recorded
5 this, it became apparent at least to the people at Monsanto
6 that you submitted it to, if nobody else read it, they
7 certainly read it or should have read it, shouldn't they, sir?

8 A. Yes.

9 Q. Now, Doctor, would you agree, sir, that a --
10 something that's of a -- that has a -- that a worker should
11 not be exposed to chemicals that have this kind of insidious
12 nature once it becomes known?

13 A. I would agree that everything should be done to
14 decrease such exposure, which is what companies usually do if
15 they encounter a problem.

16 Q. No, Doctor, but my question is do you not believe,
17 sir, that these workers that developed this evidence of these
18 problems they should be removed from further exposure?

19 A. If you're saying they should be removed from that
20 particular job, no, sir.

21 Q. Doctor, my question is from further exposure.

22 A. Well, I'm not able to answer that question, sir,
23 because I don't know what you really mean by exposure. What
24 exposure?

1 Q. Take the words at face value, exposure, from
2 further exposure to the toxic chemical in question, sir.

3 A. Not necessarily.

4 Q. Doctor, do you -- you do agree that the chemical in
5 question is of an insidious nature and that includes
6 cumulative effect, doesn't it, sir?

7 A. No, sir.

8 (Plaintiffs' Exhibit 1798 marked for
9 identification.)

10 Q. Doctor, I hand you an exhibit and see if you agree
11 with the definition of the word insidious as shown there,
12 sir.

13 THE COURT: What number is that, Mr. Carr?

14 MR. CARR: 1798.

15 MR. HEINEMAN: May I see that please before the
16 witness testifies about it?

17 MR. CARR: Sure.

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

20 THE COURT: Sure.

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

23 MR. HEINEMAN: Your Honor, I'm going to object to
24 him asking him to look at what apparently is a page copied

1 from a dictionary to testify as to whether or not he agrees
2 or disagrees with that definition. The witness has already
3 given the definition of the term as he used it. Now, he
4 shouldn't be asked about that document unless that document
5 is being offered in some way, and it's not the type of thing
6 that you can get in evidence. There's nothing here with
7 respect to the source of the document, there's no foundation
8 established for this. There's no identification, it's
9 hearsay, and there's nothing been established to get this
10 document or this definition in evidence, and, therefore, I
11 object to the question.

12 MR. CARR: I'm not trying to get the book or the
13 document in evidence yet, Your Honor. I'm simply asking him
14 whether or not he agrees with the definition. I may not have
15 to get it in evidence. He may agree to it.

16 THE COURT: Go ahead. Objection is overruled.

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

18 Q. Now, Doctor, read it and see if you agree with it,
19 sir.

20 MR. HEINEMAN: Excuse me, Your Honor. May counsel
21 approach the bench one more time?

22 THE COURT: Yes, you may.

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

1 MR. HEINEMAN: Your Honor, I would further object
2 to his questioning him on this, because he has not
3 identified, the witness has not identified this as
4 authoritative. We don't know where it came from, and it's
5 not been identified as authoritative, and that was certainly
6 the grounds upon which Mr. Carr objected and this Court
7 sustained objections to questions about Dr. Carnow by me and
8 therefore --

9 THE COURT: Not on a page from a dictionary on the
10 definition of a word I didn't do that when you were
11 questioning Dr. Carnow.

12 MR. CARR: For the record counsel frequently read
13 things from an exhibit that he marked that he had in his hand
14 and asked Dr. Carnow whether he agreed with it long before
15 the book was ever described or identified. That was a modus
16 operandi of cross-examination by Mr. Heineman. That's the
17 way he did it all the time.

18 MR. HEINEMAN: Right.

19 MR. CARR: You'd read from a document in his
20 possession, and say, Doctor, do you agree with this statement
21 without ever identifying it, without ever putting it in
22 evidence.

23 MR. HEINEMAN: The reason for that that was that
24 was the method that you did not object to.

1 MR. CARR: Of course I didn't object to it. It's
2 perfectly proper.

3 MR. HEINEMAN: While I thought the method I had
4 selected was proper as well, the Court had already--

5 MR. CARR: It was the method that you--

6 MR. HEINEMAN: It was the method that I resorted to
7 when the Court instructed or sustained your objection to the
8 method that I had previously selected, so if you want to sit
9 at your seat and ask him, to read him the definition and see
10 if he agrees with it, that's fine.

11 MR. CARR: But he can't read it himself and see if
12 he agrees with it? You'd rather have it read.

13 THE COURT: Objection is overruled.

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

15 Q. Doctor, do you agree with this definition of the
16 word insidious? Awaiting a chance to entrap?

17 A. I do not agree with it in this case, sir.

18 Q. Excuse me, I didn't finish yet. That's just one --
19 one definition, Doctor.

20 A. Okay.

21 Q. Awaiting a chance to entrap, treacherous, harmful
22 but enticing, drugs that destroy the young, having a gradual
23 and cumulative effect, subtle, of -- definition b of a
24 disease would be developing so gradually as to become well

1 established before becoming apparent. Do you agree with any
2 of those definitions of the word insidious?

3 A. With respect to this group, yes.

4 Q. Which of -- which of these definitions do you agree
5 with with respect to this group, sir?

6 A. Treacherous.

7 Q. Treacherous, all right. Doctor, the -- do you
8 believe then that a chemical worker should be removed from a
9 treacherous hazard?

10 A. No.

11 Q. You think they should continue on to be exposed to
12 a hazard that's treacherous?

13 A. No.

14 Q. Well then, if they shouldn't be exposed to it then,
15 Doctor, they should be removed from it, should they not?

16 A. No, sir.

17 Q. Doctor, if you have your option of removing a
18 person from a treacherous hazard or having him continually
19 exposed to a treacherous hazard, he's either going to be
20 removed or exposed, isn't he, sir?

21 A. No, sir.

22 Q. Which other option did I give you, sir?

23 A. Well, there are several other options.

24 Q. Doctor, in this circumstance which other option did

1 I give you, either removing him --

2 A. No, none of those options apply in this instance.

3 Q. Doctor --

4 A. None of those options apply. You've given me two
5 options and I say no.

6 Q. Doctor, you do know the men were continued to be
7 exposed to this treacherous chemical, you do know that, don't
8 you, sir?

9 A. Not necessarily. For how long?

10 Q. Doctor, I didn't even suggest as to how long, but
11 you do know that they continued to be exposed to this
12 treacherous chemical, did you not, sir, this treacherous
13 hazard?

14 A. No, sir.

15 Q. Doctor, didn't you recognize that they continued to
16 work at that plant making the 2,4,5-T with the same process,
17 you do know that, don't you, sir?

18 A. Not under the same conditions.

19 Q. Doctor, I said in the same process, didn't I?

20 A. I said not under the same conditions.

21 Q. But, Doctor, did you hear me? I said of the same
22 process, didn't I?

23 A. The answer is no, sir.

24 Q. They weren't their with the same process?

1 A. No, sir.

2 Q. Doctor, did they ever change the process?

3 A. Yes.

4 Q. When did they change it, sir?

5 A. They changed the hygiene, they changed the--

6 Q. Doctor, my question--

7 A. The process includes all of the elements, sir, of
8 making a chemical and the -- and the engineering aspects of
9 how, when, and where a chemical is made and what kinds of
10 hygienic aspects are used. That's the total process, not
11 just the making of the chemical.

12 Q. Doctor, when I'm using the word process -- I see
13 we're at a problem with communication-- when I was using the
14 word process, I meant the way they make it.

15 A. If you're mentioning mixing two chemicals
16 together--

17 Q. Did they change the process by which they made
18 2,4,5-T?

19 A. Yes, I say they did.

20 Q. What's that, Doctor?

21 A. Well, they -- they altered the hygienic
22 considerations in that building.

23 Q. Doctor, didn't you hear me that I said the process
24 by which the chemical is made. I wasn't talking about the

1 fact that they started sweeping the floor or the hygiene or
2 they had the men wash their hands or put on different
3 clothing. I gave you the way I was using the word process,
4 Doctor. That simply referred to the way the chemical was
5 made. Now, are you with me, Doctor?

6 A. Yes, I'm with you.

7 Q. They did not change the way the chemical was made,
8 did they, sir?

9 A. That's true, sir.

10 Q. All right. And, Doctor, the men were not removed
11 from the building in which the chemical was made, were they,
12 sir. They continued to work there, didn't they, sir?

13 A. No.

14 Q. They didn't continue to work there?

15 A. No, sir.

16 Q. Doctor, they worked making this chemical in those
17 buildings where the chemical was made, did they not? Didn't
18 we go through, Doctor, building -- all these buildings where
19 they worked all this period of time?

20 A. Some of them -- some of them went back to work,
21 yes, sir.

22 Q. They weren't removed from exposure, were they, sir?

23 A. Some of them were.

24 Q. Some were and some weren't, isn't that right,

1 Doctor?

2 A. That's true.

3 Q. And, Doctor, these men were continued to be exposed
4 to this treacherous hazard then, weren't they, sir?

5 A. No, sir.

6 Q. Doctor, the men that continued to work there
7 continued to be exposed to the treacherous hazard, didn't
8 they, sir?

9 A. No, sir.

10 Q. Why not, Doctor?

11 A. Because it all depends on what you mean by exposed
12 to the treacherous hazard.

13 Q. Doctor, didn't men continue to get chloracne and
14 other problems through the years? Do you recall we spent a
15 considerable length of time in showing the number of men that
16 continued to get problems of chloracne after the accident?
17 Do you recall that, sir?

18 A. That's correct, sir.

19 Q. All right, Doctor. So these men continued to work
20 there, did they not, some of the men, sir, in this process
21 that caused these problems to occur, didn't they, sir?

22 A. Some of them worked in those circumstances, sir.

23 Q. All right. Now, Doctor, when you said you used the
24 word insidious, where did you use it?

1 A. I thought I did, sir.

2 Q. Well, Doctor, you said you did. Where did you use
3 it, sir?

4 A. I been looking for it, and I'm trying to recollect
5 where I did.

6 Q. Doctor, you mean to say you've answered the
7 question there that you used it, and you don't know that you
8 used it?

9 A. I said I thought I did, sir.

10 Q. Doctor, were you ever consulted with the people at
11 the plant there in 1953 about the kind of response that
12 should be made to the Bureau of Industrial Hygiene of the
13 State of West Virginia?

14 A. Would you repeat the question please.

15 (Court reporter read back the last question.)

16 A. I can't recall whether I had, except that there was
17 a memorandum of Mr. Wager's which describes our meeting with
18 the -- with a board of -- this is the Bureau of Industrial
19 Hygiene you're talking about.

20 Q. That's right, not the workers' compensation,
21 Doctor, I'm on another subject.

22 A. I can't recall, sir.

23 Q. Were you ever told that your study in March of '53
24 was in part of a response to questions asked by the Bureau of

1 Industrial Hygiene of the State Department of Health of West
2 Virginia, was that made known to you, sir?

3 A. I really can't recall, sir.

4 Q. I'm sorry, you can't recall?

5 A. I can't recall.

6 Q. All right. Let me help you.

7 (Plaintiffs' exhibit 1799 marked for
8 identification.)

9 Q. Hand you Plaintiffs' Exhibit 1799?

10 A. Thank you.

11 Q. Ask you if you recognize that as a document with a
12 Monsanto letterhead, Nitro, West Virginia dated January 6,
13 1953 and signed by Mr. E. G. Volz, V-O-L-Z, Safety Director
14 of the Monsanto Chemical Company? Do you see that, sir?

15 A. Yes.

16 Q. It's rather lengthy. You're trying to read it. I
17 don't want you to read it yet.

18 A. Okay.

19 MR. CARR: Your Honor, I'd like to offer this
20 exhibit into evidence at this time.

21 THE COURT: Any objections?

22 MR. HEINEMAN: May counsel approach the bench?

23 THE COURT: Sure.

24 (At this time a conference was had at the bench out

1 of the hearing of the jury.)

2 MR. HEINEMAN: In addition to the relevancy
3 question, Judge, which we previously preserved --

4 THE COURT: Right.

5 MR. HEINEMAN: We have -- we object on the basis
6 that there's been no identification by this witness, there's
7 been no authentication of the document, there's no foundation
8 for its admission and it's hearsay.

9 MR. CARR: Your Honor, it's obviously from the
10 Monsanto Chemical Company, it is relevant to the subject
11 we're discussing as it will be easy to demonstrate when we
12 get into it, it's signed by Mr. E. G. Volz, and can be
13 considered, if nothing else, an admission on the part of the
14 company.

15 THE COURT: Objection is overruled. It's admitted
16 (The following proceedings were had in open Court.)

17 MR. CARR: Your Honor, I have copies to pass to the
18 jury if I might.

19 THE COURT: Fine.

20 Q. Doctor, this exhibit you have read enough of it to
21 note that the subparagraphs a, b, c, and so forth are
22 divided, first of all, into the statements made by the
23 department, the State Department of Health and then
24 Monsanto's reply to those statements, the paragraph in quotes

1 being the recommendation made by the State Department of
2 Health, the paragraph right beneath it being Monsanto's reply
3 to that recommendation or comments regarding the
4 recommendation, is that correct, Doctor?

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

6 Q. You don't see that, sir?

7 A. No, sir Dr. Birmingham and Denton are not from the
8 State Department of Health, sir.

9 Q. Well, where are they from, Doctor?

10 A. You should know where they're from, sir.

11 Q. I don't know where they're from, I've never heard
12 of them before, Doctor.

13 A. I know two of these gentlemen very well.

14 Q. Where are they from?

15 A. And I trained one of them and one of them happens
16 to be one of my best friends, Dr. Birmingham, and at the time
17 these men were in the Public Health Service in Cincinnati,
18 and there was a dermatologic unit there, an investigative
19 unit, and they were asked to come in by the company, they
20 were asked to come in and review the clinical problem as well
21 as the hygienic problems, cause in reviewing clinical
22 problems in occupational diseases you have to review the
23 environment, and they did and their recommendations a, b, and
24 c, and all the rest are the recommendations of the Public

1 Health Service.

2 Q. Of the federal government, you mean?

3 A. Yes.

4 Q. All right. And these men are -- know what they're
5 talking about, I take it, Dr. Birmingham and Dr. Denton?

6 A. I believe they do.

7 Q. They wouldn't make recommendations that they didn't
8 mean, that they didn't think was important, they didn't think
9 should be carried out, would they, Doctor?

10 A. No, they were very competent people.

11 Q. And you would agree, I take it, you would agree
12 with their recommendations, wouldn't you?

13 A. I haven't read the recommendations, sir, you asked
14 me not to.

15 Q. Doctor, based upon what you know of these very
16 competent people, I take it until you see something you
17 absolutely wouldn't agree with, you would say these men,
18 their recommendations should be followed out, wouldn't you,
19 sir?

20 A. If the recommendations are completely feasible,
21 yes.

22 Q. Yes. Completely feasible?

23 A. Yeah.

24 Q. Doctor, Dr. Birmingham and Dr. Denton would know

1 whether or not they're feasible, wouldn't they, sir?

2 A. Not necessarily.

3 Q. These very competent men that you trained, they
4 wouldn't know whether something is feasible, Doctor?

5 A. If they recommended engineering --

6 Q. Excuse me, Doctor?

7 A. It might not be feasible.

8 Q. Would you answer the question, sir?

9 A. I have answered it, sir.

10 Q. You would not make an engineering recommendation
11 that you did not know was feasible, you wouldn't even make an
12 engineering recommendation, would you, sir?

13 A. You're right.

14 Q. Neither would Dr. Birmingham or Denton that you
15 trained, would they, sir, if they're doing their job the way
16 you taught them to do it, isn't that correct, sir? Doctor,
17 isn't that correct? Doctor?

18 A. Yes, sir I am --

19 Q. Isn't that correct, sir?

20 A. Would you repeat the question please.

21 (Court reporter read back the last question.)

22 A. They might. I couldn't prevent them from doing it.

23 Q. Doctor, what I'm saying is they're physically
24 capable of doing it, but as trained scientists they would not

1 do it if you trained them, would they, sir?

2 A. They would probably not make explicit engineering
3 recommendations.

4 Q. They would undoubtedly say in an area where they're
5 not experts, they would say if this can be done from an
6 engineering standpoint, it should be done or something of
7 that sort, wouldn't they, sir?

8 A. No.

9 Q. They wouldn't?

10 A. What they would do is to recommend, I suppose, what
11 was eventually done, and that is to have engineers from the
12 Kettering Laboratory do a survey of the processes,
13 engineering survey, which was done.

14 Q. That's on the engineering, but other health-- they
15 are certainly competent to make recommendations relating to
16 the subject of the health of these workers, aren't they, sir?

17 A. I believe they are.

18 Q. There's no question about that, so we can get that
19 out of the way, is that right, sir? No question about it, is
20 that right, sir?

21 A. I have already stated what I thought of them, sir.
22 They are very competent.

23 Q. And there is no question but what they are
24 competent to make recommendations about the health of the

1 workers, isn't that correct, sir?

2 A. They are competent to do that, sir.

3 Q. Now, Doctor, this report was sent apparently to the
4 company by the Department of Industrial Hygiene of the State
5 Department of Health, is that correct, sir, according to the
6 first paragraph of this letter?

7 A. The original copy of the report it says, right.

8 Q. And Monsanto then is replying or commenting upon
9 the recommendations made in that report by Dr. Birmingham and
10 Dr. Denton that was sent to Monsanto by the State Department
11 of Health, isn't that correct, sir?

12 A. Yes, sir.

13 Q. All right. Now, Doctor, the first recommendation
14 they made is in quotes, is it not, sir, following the letter
15 a?

16 A. Yes.

17 Q. And it says, does it not, sir, the entire operation
18 involving chlorinated hydrocarbons should be isolated from
19 those workers not directly concerned with this process, is
20 that correct, sir?

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

22 Q. And, Doctor, that's a recommendation they made from
23 the health viewpoint, isn't it, sir?

24 A. Yes.

1 Q. And now Monsanto says because everybody knows the
2 problems involved, they don't consider that isolation of that
3 department is indicated, isn't that correct, sir? Isn't that
4 what they said? Therefore, we do not consider that isolation
5 of the department as such is indicated?

6 A. Well, I think they gave a more complete reason than
7 you're reading, sir.

8 Q. Doctor, they say that they don't believe anyone
9 involved will unduly exposed himself to any known hazard,
10 isn't that right, sir? Isn't that what they say, sir?

11 A. Anyone not involved, not involved, sir, not
12 involved.

13 Q. All right. Anyone not involved will not unduly
14 expose himself to any known hazard?

15 A. That's correct, sir.

16 Q. Now Monsanto acknowledges that this problem
17 involved with this process is a known hazard, is that
18 correct, sir?

19 A. Well, it says any known hazard. I don't know
20 whether they're referring to that.

21 Q. Doctor, they're talking about the operation
22 involving chlorinated hydrocarbons, aren't they, sir?

23 A. Okay, correct.

24 Q. And they're talking about known hazard involved

1 with working with the chlorinated hydrocarbons, aren't they,
2 sir?

3 A. Well, they say any known hazard, and I assume
4 they're talking about that as well.

5 Q. Doctor, that is the subject of the recommendation,
6 of the comment, is it not, sir?

7 A. Yes.

8 Q. And, Doctor, the paragraph c -- paragraph b talks
9 about a detailed work history that should be done and worker
10 maintained at one specific job so they'll know, so they'll be
11 able to track down what operations are hazardous, not flip
12 them from job to job, correct, sir?

13 A. Right, that's correct.

14 Q. All right. And Monsanto said that they can't do
15 that, correct, sir, it's not economically practical to keep
16 personnel activities restricted to specific jobs?

17 A. That's what they said, sir.

18 Q. And, Doctor, of course you knew when you did your
19 later morbidity study that the fact that the personnel
20 weren't restricted to specific jobs did indeed make it more
21 difficult for you to know who was exposed and who was not,
22 correct, sir?

23 A. Yes.

24 Q. Doctor, the next recommendation, paragraph c, is

1 improving operations is recommended, and meticulous
2 protection from these workers from fumes, liquids, and so
3 forth should be enforced, because it's not known then
4 definitely whether chloracne and the associated symptoms are
5 the result of skin contact or systemic absorption or both,
6 isn't that right, sir?

7 A. That is the comment of Dr. Birmingham and Dr.
8 Denton, sir.

9 Q. Yes. And you, of course, have discovered that it
10 is a result of both cutaneous contact and systemic
11 absorption, didn't you, sir?

12 A. Well, we believed at the time that there might be
13 both.

14 Q. Well, you have discovered --

15 A. We believed at the time, and we have said that in
16 our publications.

17 Q. Well, my question is, sir, you said it then and you
18 discovered that it is true, that it is both, haven't you,
19 sir?

20 A. Well, not really. We could only have determined
21 whether it could be both -- if you're talking about systemic
22 absorption --

23 Q. No, I'm not, Doctor, it's a report here.

24 A. It could come in through the skin and get into

1 the-- and eventually it could go through the skin and get
2 eventually into other organ systems.

3 Q. Yes.

4 A. But what we were talking about at the time is that
5 there may be other portals of entry.

6 Q. You discovered --

7 A. By accident, for example, by accidental ingestion of
8 the people that were eating--

9 Q. You have discovered that there are other methods of
10 ingestion, haven't you, sir, breathing, eating?

11 A. Other methods of absorption, sir.

12 Q. Isn't that right, sir?

13 A. There are potentially, potentially other routes of
14 absorption. We didn't prove it, sir.

15 Q. Well, you know that it's now true, don't you, sir?

16 A. No, I don't.

17 Q. Then you haven't accepted the testimony of every
18 toxicologist that has come in here that it can come in
19 through your breathing it, through your eating it, through
20 your skin?

21 A. I'm talking about this particular, I'm talking
22 about this particular situation.

23 Q. Doctor, I'm talking about the absorption of TCDD.

24 A. So am I, sir.

1 Q. It can come in through your skin, it gets into your
2 system, it gets into your liver, it gets into your kidney, it
3 gets into your system through the skin, through breathing it,
4 through eating it, does it not, sir?

5 A. No, sir.

6 Q. It does not?

7 A. No, sir.

8 Q. Doctor, can you not get TCDD in your system by
9 inhaling air that has TCDD particles in it?

10 A. You might.

11 Q. Can you not get TCDD in your system by eating dirt
12 that's contaminated with TCDD?

13 A. If one likes to eat dirt.

14 Q. You don't have to get it in order to like it,
15 Doctor, you don't have to like it in order to get it, do you,
16 sir? Children do --

17 A. I don't know what you mean by eating dirt.

18 Q. Children do eat dirt, don't they, sir? Children
19 eat dirt, don't they, sir, some children eat dirt?

20 A. They might.

21 Q. Doctor, you can get it from contact, from
22 inhalation, from ingestion, can you not, sir?

23 A. Those are the possibilities, sir.

24 Q. Doctor, hasn't it been established those

1 possibilities are the methods by which TCDD gets into
2 people's systems?

3 A. Not by research, sir.

4 Q. Doctor, any way you want to talk about it, has it
5 been established that way, sir?

6 A. No, it hasn't, sir.

7 Q. You don't agree then?

8 A. That's what I'm saying.

9 Q. You don't agree then with the testimony of the
10 various toxicologists who have testified here?

11 A. If you're talking about human absorption--

12 Q. Any absorption, animals, humans, birds whatever.

13 A. Animal absorption is a controlled way of exposure,
14 sir, you've got to leave that out. We're talking about
15 humans here, and the -- and the situation with respect to
16 humans is that we suspect that TCDD might be absorbed through
17 the skin -- well, through the skin we know, through the
18 gastrointestinal tract under certain unusual conditions it
19 might be absorbed and through inhalation we really don't
20 know. We don't have any real hard data about human absorption
21 via the respiratory tract.

22 Q. Doctor, do you have hard data on animal absorption
23 do their systems absorb TCDD through the respiratory system
24 and through the intestinal tract?

1 A. Under controlled experiments, yes, there are.

2 Q. All right, Doctor. Let's back off from that,
3 because apparently we have plenty of evidence on the point,
4 and I don't need your opinion on the view, Doctor. At least
5 what was said at this time, at least in the animals it's been
6 shown to be true, is it not, sir?

7 A. Under experimental conditions it has been shown to
8 be possible, sir.

9 Q. Doctor, haven't they shown that it occurs?

10 A. If you expose animals like this.

11 Q. Doctor, didn't you expose animals yourself in your

12 --

13 A. Correct, under certain conditions.

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

15 A. Under certain conditions of exposure one can
16 demonstrate that.

17 Q. All right, Doctor. If you will go over to Page --
18 there's a number of health recommendations and medical
19 recommendations made on the balance of Page 2 and all of Page
20 3, is there not, sir? I'd like to direct your attention to
21 Page 4, sir, paragraph numbered 4. These doctors recommended,
22 these health doctors recommended, did they not, sir, quote
23 " workers developing any evidence of toxicity should be
24 immediately removed from further exposure" end of quote?

1 A. That's what this reads, sir.

2 Q. That is a health recommendation for the sake of the
3 health of the workers, isn't it, sir?

4 A. Yes, I believe so.

5 Q. One perfectly within the competence and expertise
6 of these two men, at least these men, one of whom you
7 trained, Dr. Birgmingham and Denton, isn't that correct, sir?

8 A. Correct, sir.

9 Q. And, Doctor, Monsanto's response to that was quote
10 " this is not consistent with the policy of attempting to
11 limit the number of persons potentially exposed to a hazard
12 of an insidious nature. " That was Monsanto's response, isn't
13 that correct, sir?

14 A. That's what this letter reads, sir.

15 Q. Doctor, what Monsanto is saying there that these
16 workers that already have the evidence of toxicity, these
17 workers that are already poisoned, it's okay to poison, to
18 expose them further to this treacherous hazard, isn't that
19 correct, sir?

20 A. No, not necessarily.

21 Q. Oh, Doctor, isn't Monsanto saying that they're not
22 going to remove these workers who developed evidence of
23 toxicity, they're not going to remove these workers from
24 further exposure? Isn't that exactly what they're saying?

1 They're saying the recommendation is not consistent with the
2 policy of attempting to limit the number of persons
3 potentially exposed to this treacherous hazard?

4 A. I'll answer your first question first. They didn't
5 say that they should not be removed from further exposure.
6 They do say that it's not consistent with the policy of
7 attempting to limit the number of persons potentially
8 exposed. Now, there's a difference there, sir, and I can
9 explain that.

10 Q. Well, let's hear it, Doctor.

11 A. Okay. I think all of us know what the potential
12 hazard of vinyl chloride is in the making of polyvinyl
13 chloride, which we have in our -- in shoes and upholstery and
14 automobiles and so on and as a polymer polyvinyl chloride is
15 innocuous. However, vinyl chloride is a very treacherous
16 substance. However, we still make hundreds of millions of
17 pounds of it, but we make it safely. So that it really
18 depends upon not the agent, which may be toxic, but how it's
19 made and how it's handled in the manufacture so that the
20 business of being potentially exposed is, I think, the clue
21 to this sentence. What I think Monsanto, and I'm only saying
22 this, cause I -- if I were involved, this is the way I would
23 look at it is that everything is being done to limit the
24 actual exposure, everything is being done to limit the actual

1 exposure even though there may be a harmful agent in the --
2 in the process.

3 Q. Doctor, what the Drs. Denton and Birmingham have
4 said when they developed it, the evidence of toxicity, that
5 is, it shows that they are getting this chemical in them,
6 they should be immediately removed, isn't that what the
7 doctors are saying?

8 A. Correct, sir.

9 Q. Monsanto says to do so is not consistent with the
10 policy, don't they, sir?

11 A. That's what they say, sir.

12 Q. Aren't they saying that they're not adopting this
13 recommendation that's made here of removing these workers
14 when they develop evidence of toxicity? Aren't they saying
15 they're not going to remove them, Doctor?

16 A. It could be interpreted that way, and it could be
17 interpreted in the way of not removing them from the
18 exposure, but making sure that these people -- people's
19 exposure was limited, that is, their actual contact with the
20 material would be limited.

21 Q. Doctor, the way you're going -- if they develop
22 evidence of toxicity, that means they're being exposed,
23 doesn't it, sir? They're working in the product, they're
24 working in the --

1 A. Correct.

2 Q. In the plant where they're wrapping it up?

3 A. Correct.

4 Q. They got this evidence of toxicity, they're being
5 exposed to that method of operation, aren't they, sir?

6 A. If --

7 Q. And if all the hygienic program is in effect and
8 all the medical supervision in effect and they develop this
9 evidence of toxicity, they are being exposed, aren't they,
10 sir, when they get this toxic evidence?

11 A. Yes, they are.

12 Q. Now, the health workers are saying when that
13 occurs, remove these workers from further exposure, aren't
14 they, sir?

15 A. They are.

16 Q. And Monsanto is saying this is not consistent with
17 our ^{POLICY} positively, aren't they, sir?

18 A. That's what they said sir.

19 THE COURT: Mr. Carr, is this a good point to
20 break?

21 MR. CARR: Yes, Your Honor.

22 THE COURT: We'll break for the day at this time.
23 We'll resume testimony tomorrow morning at 9:30. I would
24 remind you that you're not to read, listen to or watch

1 anything about this case in particular or the subject matter
2 in general in any of the media. Thank you for your attention
3 and cooperation. Court's adjourned.

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1 STATE OF ILLINOIS)
2) SS.
3 COUNTY OF ST. CLAIR)

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I, MARSHA SCHNIPPER, certify the foregoing to be a true and accurate transcript of the testimony and proceedings in the above-entitled cause.

Dated this ____ day of March, 1986.

1 STATE OF ILLINOIS)
2) SS.
3 COUNTY OF ST. CLAIR)
4

5 I, RICHARD P. GOLDENHERSH, one of the Judges in and
6 for the Twentieth Judicial Circuit, do hereby certify that
7 the foregoing transcript is a true and correct transcript of
8 the proceedings had in said cause.

9 Dated this ____ day of March, 1986.

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12 _____
13 RICHARD P. GOLDENHERSH, JUDGE
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