

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

3 FRANCES E. KEMNER, et al., )  
4 Plaintiffs, )  
5 vs. ) NO. 80-L-970  
6 MONSANTO COMPANY, )  
7 Defendant. )

8 Before the HON. RICHARD P. GOLDENHERSH, Judge  
9  
10  
11

12 JURY TRIAL

13 July 29, 1985  
14  
15  
16  
17

18 APPEARANCES:

19 MR. REX CARR and MR. JERRY SEIGFREID, Attorneys at Law  
20 Appeared on Behalf of the Plaintiffs

21 MR. KENNETH HEINEMAN and MR. JOSEPH NASSIF,  
22 Attorneys at Law  
Appeared on Behalf of the Defendant

23 MARSHA SCHNIPPER  
24 Official Court Reporter

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1 BE IT REMEMBERED AND CERTIFIED that heretofore, on  
2 to-wit: Monday, July 29, 1985, being one of the regular  
3 judicial days of this Court, the matter as hereinbefore set  
4 forth came on for hearing before the HON. RICHARD P. GOLDEN-  
5 HERSH, Circuit Judge in and for the Twentieth Judicial Circuit,  
6 State of Illinois, St. Clair County Building, Belleville, St.  
7 Clair County, Illinois, and the following was had of record,  
8 to-wit:

9 \* \* \* \* \*

10 THE COURT: Morning.

11 DR. GEORGE ROUSCH,

12 resuming the witness stand, having been previously sworn,  
13 testified further as follows:

14 RECROSS EXAMINATION (Continued)

15 BY MR. CARR:

16 Q Doctor, I hand you now what's been marked Plaintiff's  
17 Exhibit 1529 and ask you to look at that and see if you don't  
18 agree that this is dealing with 2,3,7,8 TCDD found in Building  
19 46.

20 A I don't see where it says what building it is, sir.

21 Q Look at the -- the Pages 1, 2, 3, 4th from the last  
22 -- I'm sorry, 3rd from the last page. See where it tells  
23 where they took the samples from?

24 A The 3rd from last?

1 Q Yes, right in here, from Building 79, we've already  
2 gone through that and here then 46.

3 A Right.

4 MR. CARR: Offer that exhibit into evidence if it  
5 please the Court.

6 THE COURT: Any objections?

7 MR. HEINEMAN: Your Honor, it's clearly a Monsanto  
8 document, but I don't think he's laid an adequate foundation  
9 for its admission, and I'd object to it on that basis.

10 THE COURT: Objection is overruled. It's admitted  
11 over objection.

12 (At this time Plaintiff's Exhibit 1530 was marked for  
13 identification purposes.)

14 Q Doctor, I hand you now what's been marked Plaintiff's  
15 Exhibit 1530 and ask you to look at that and see if you recog-  
16 nize that as dealing with an analysis of various soil samples  
17 in landfill areas in the Nitro Plant for 2,3,7,8 TCDD?

18 A Yes, sir.

19 Q Now, 1529 and 1530 both show the presence of 2,3,7,8  
20 TCDD in the samples, wipe samples from Building 46 and taken  
21 from these various land locations in the Nitro Plant, do they  
22 not?

23 A I haven't figured that out yet.

24 MR. CARR: I don't think I offered 1530, your Honor.

1 I offer 1530.

2 THE COURT: Any objection to 1530?

3 MR. HEINEMAN: Same objection as before, your Honor.

4 THE COURT: Fine. Same ruling. It's admitted over  
5 objection.

6 Q Doctor, can I help direct your attention to the tables?

7 A Yes, sir, I think they list them as -- even though  
8 the title says 2,3,7,8, in the chart it says parts per billion  
9 of TCDD. It doesn't say 2,3,7,8.

10 Q Well, Doctor, if you'll look at the introduction, it  
11 talks about -- they're comparing it with a 2,3,7,8 spike,  
12 are they not, in each of these instances?

13 A I haven't read that.

14 Q Have you read it now, Doctor?

15 A Yes, sir, but it doesn't say that they confirmed that  
16 it was 2,3,7,8.

17 Q Doctor, the entire introduction talks about using  
18 a specific 2,3,7,8 comparison, and then they give the results  
19 using that specific standard. It's not unusual for your company  
20 to use this shorthand method of describing 2,3,7,8, is it, sir,  
21 to use TCDD?

22 A No, sir, not to me.

23 Q Now, Doctor, both of these exhibits deal with the  
24 analysis of soil samples and wipe samples from these buildings

1 and from these various land areas for 2,3,7,8 TCDD, does it not,  
2 sir?

3 A They were looking for something that would elute with  
4 2,3,7,8. I'm not sure they established that it was. They don't  
5 say it is.

6 Q Where does it say they're looking for something that  
7 elutes with 2,3,7,8? Would you show me that language please?

8 A No, sir, I can't find that.

9 Q Then, Doctor, why are you saying that they're doing  
10 that? They're looking for 2,3,7,8 TCDD, they call it Analysis  
11 of Wipes for 2,3,7,8 TCDD, don't they, sir? Your chemists know  
12 what they're looking for and they call it -- they analyze for  
13 possible concentration of 2,3,7,8 TCDD, don't they, sir?

14 A Yes, sir.

15 Q On the very first page they're talking about it?

16 A Yes, sir.

17 Q And they don't anywhere say that it's not 2,3,7,8 TCDD,  
18 do they, sir?

19 A But they don't say it is either.

20 Q Doctor, what is the heading of the document?

21 A Analysis for 2,3,7,8.

22 Q And, Doctor, do they report parts per billion in their  
23 tables of what they found?

24 A Yes, sir.

1 Q Now, Doctor, these exhibits were all dated in 1985,  
2 were they not, sir?

3 A Yes, sir.

4 Q Doctor, the remedial work that took place took place  
5 in -- the original testing for the EPA took place in 1983,  
6 didn't it, sir?

7 A I'm not sure whether it was '83 or '84.

8 Q Well, look at 1527 please, Doctor, Exhibit 1527.

9 MR. CARR: Does he have the exhibits?

10 A No, sir.

11 Q The second sentence, Dr. Rousch, of the third page  
12 entitled TCDD Remedial Work it says, sampling conducted during  
13 1983 indicated the presence of TCDD at the plant, does it not,  
14 sir?

15 A Yes, sir.

16 Q And TCDD there is used as a short term reference for  
17 2,3,7,8 tetrachlorodibenzo-p-dioxin, isn't it, sir?

18 A I don't know.

19 Q Doctor, look at the sentence just immediately pre-  
20 ceding it. You see the words 2,3,7,8 tetrachlorodibenzo-p-  
21 dioxin?

22 A Yes, sir.

23 Q And then behind it the parenthesis TCDD?

24 A Yes, sir.

1 Q They use TCDD there as a shorthand reference for  
2 2,3,7,8 tetrachlorodibenzo-p-dioxin, do they not, sir?

3 A I'm not -- I'm not sure ~~that~~ that's what it says.

4 Q Doctor, when I write the name Rex Carr here and put  
5 in parenthesis behind it Carr, and you see the name Carr  
6 throughout that document, you know from the fact that the full  
7 name was written out and then my -- the last name was put in  
8 parenthesis, you know that wherever the name Carr appears with-  
9 out parenthesis throughout that document, that that's shorthand  
10 for Rex Carr; you know that, that's a very common method of  
11 writing, isn't it, Doctor?

12 A Yes, sir.

13 Q And that's exactly the method they use in this  
14 document. Do you see that 2,3,7,8 TCDD right there, Doctor?

15 A Yes, sir.

16 Q And do you see immediately behind that in parenthesis  
17 the letters TCDD?

18 A Yes, sir.

19 Q Now, they mean to tell you that TCDD means throughout  
20 this document 2,3,7,8, do they not, sir?

21 A I don't know.

22 Q Doctor, isn't that the way a document like that is  
23 ordinarily read and interpreted, customary and ordinary usage  
24 is just as I have described it to you?

1 A No, sir.

2 Q That isn't customary and ordinary usage, Doctor?

3 A No, sir.

4 Q You don't do that rather than write out the entire  
5 thing?

6 A They're talking about two different time frames.

7 Q Doctor, the TCDD follows immediately behind the words  
8 tetrachlorodibenzo 2,3,7,8, doesn't it, sir?

9 A Yes, sir.

10 Q And isn't the TCDD in those parenthesis referring to  
11 2,3,7,8 tetrachlorodibenzo-p-dioxin in that sentence, sir?

12 A I don't know.

13 Q You don't know that, Doctor?

14 A No, sir.

15 Q Isn't that the way you would interpret that, Doctor?

16 A It may be that or it may not.

17 Q Doctor, my question is isn't that the way that you  
18 would interpret that.

19 A No.

20 (Pause)

21 Q (Mr. Carr writing on easel.)

22 A I can't quite see that, sir.

23 Q That's all right, you don't need to. I'll read it  
24 to you. I'm not writing well enough to read it anyway. Doctor,

1 I've written on this pad which nobody can see but me 2,3,7,8  
2 tetrachlorodibenzo-p-dioxin at the top of it right there; you  
3 see that?

4 A Yes, sir.

5 Q And although it should have been following it I've  
6 got in parenthesis TCDD close parenthesis right after. Now,  
7 you know when you read that that I mean TCDD to be referring to  
8 2,3,7,8 tetrachlorodibenzo-p-dioxin, don't you, sir?

9 A If I put them together like that, yes.

10 Q Doctor, they are put together just exactly that way  
11 in this first sentence of this document, are they not, sir,  
12 exactly that way? Tetrachlorodibenzo-p-dioxin parenthesis TCDD,  
13 2,3,7,8 tetrachlorodibenzo-p-dioxin and in parenthesis TCDD?

14 A Yes, sir.

15 Q They're put together exactly --

16 A Yes, sir.

17 Q And you just said that's the way you would read it?

18 A Yes, sir.

19 Q And you meant what you just said, didn't you, sir?

20 A On that first sentence, yes.

21 Q TCDD there refers to the 2,3,7,8, doesn't it, sir?

22 A Yes, sir.

23 Q Now, Doctor, this work was done in 1983, wasn't it,  
24 sir?

1 A What sampling? You mean --

2 Q The sampling referred to in the exhibit that's placed  
3 there in front of you, sir. The next sentence says --

4 A Yes, sir. Yes, sir.

5 Q And, Doctor, that chart that you see there is attached  
6 to the document that refers to the 1983 sampling, isn't it, sir?

7 A What chart?

8 Q The chart, Doctor, that is the last page of the exhibit  
9 that you're holding in your hand.

10 A Oh, this one?

11 Q Yes, Doctor, that one.

12 A Yes, sir.

13 Q Sir?

14 A That talks about the area of contamination, yes, sir.

15 Q And, Doctor, this chart, Exhibit 1527B, which is part  
16 of Exhibit 1527, shows what they intend to do to remedy the  
17 findings discussed in that exhibit, isn't that correct, sir?

18 A Yes, sir.

19 Q Block H, which is here where I've indicated, and  
20 Block I, which is here in the lower right-hand corner of that  
21 document, are going to be graded so as to promote proper drainage,  
22 crushed limestone will be added so it's necessary to provide  
23 a suitable base for paving, and both blocks will be paved with  
24 two inches of asphalt, and the gravel area inside the dike wall

1 shows two storage tanks in Block I, will be paved with four  
2 inches of concrete, won't it, sir?

3 A Yes, sir.

4 Q And, Doctor, the -- that's what's going to --  
5 so all of this area here that is shaded is going to be paved  
6 with two inches of asphalt, isn't it, sir?

7 A Yes, sir.

8 Q And in addition to that, they're going to pour four  
9 inches of concrete making dike walls around those storage tanks?

10 A Yes, sir.

11 Q Doctor, the contaminated soil in this area here will  
12 be removed and placed in a sub-grade containment basin, would  
13 it not, sir?

14 A Yes, sir.

15 Q And these basins are located in part of Block I,  
16 aren't they, sir?

17 A Yes.

18 Q And they're going to be put in that part of Block I  
19 that's going to be paved, isn't it, sir?

20 A Yes.

21 Q So that the -- this soil and this soil that's con-  
22 taminated are all going to be covered with two inches of black-  
23 top, isn't it, sir?

24 A Plus concrete.

1 Q Plus concrete?

2 A Yes.

3 Q And that's something along the order that you folks  
4 suggested be done to Sturgeon in the area where the contamination  
5 existed, isn't that correct, sir, in July of '79?

6 A I don't know whether that was in July or what was  
7 said in July.

8 Q Well, Doctor, accept from me that there's a memo  
9 dated July of '79 in which you had a meeting to discuss what to  
10 do about Sturgeon and wanted -- you do recall that meeting,  
11 don't you, sir?

12 A Yes, sir.

13 Q And you do recall that one of the suggestions made at  
14 that meeting was to blacktop the contaminated areas?

15 A I don't recall that, but that's possible.

16 Q You don't recall that?

17 A Right.

18 Q Well, there's an exhibit in evidence to that effect,  
19 and that's what was suggested and what was ultimately done at  
20 Nitro, isn't that correct, sir?

21 A Yes, sir.

22 Q Also at Nitro this area up here where you have the  
23 diagonally lined parallel area, that -- all that area was to  
24 be covered with crushed limestone, wasn't it, sir?

1 A Yes, sir.

2 Q Now, this area was where there was once upon a time  
3 a trash incinerator, this area what they're talking about here  
4 where all this lined area is in the north part of this plant,  
5 isn't that correct, sir?

6 A Yes, sir.

7 Q Now, that incinerator, the fumes from that incinerator  
8 would go everywhere, would it not, sir?

9 A The exhaust, yes.

10 Q Yes, and all this area is going to be covered with  
11 crushed limestone and this dotted line around here is going to  
12 be an earthen -- I'm sorry, this line right here, this looks  
13 like about a quarter inch wide on the chart that's blown up,  
14 is all going to be an earthen dike, isn't it, sir?

15 A Yes, sir.

16 Q To prevent runoff from that area that's going to be  
17 covered with crushed limestone?

18 A Yes, sir.

19 Q It's going to be graded to a slope to two new catch  
20 basins and going to have a minimum thickness of three inches of  
21 crushed limestone?

22 A Yes, sir.

23 Q Now, this area here that they're going to do this work  
24 in in 1983, 1984 rather, is right next to your parking lot for

1 that plant, isn't it, sir?

2 MR. HEINEMAN: Objection, your Honor, the document  
3 says the work was to begin in March of 1985.

4 Q Well, the work that's to be done in March of 1985 is  
5 right next to this parking lot, isn't it, sir?

6 A Yes, sir.

7 Q And this parking lot has been used there by all the  
8 employees of that plant, hasn't it, sir?

9 A I have trouble because I can't place that parking lot.  
10 That looks like the parking lot is in the wrong place to me,  
11 but it may be the same one, I don't know.

12 Q Well, it says parking --

13 A Yes, sir, it sure does.

14 Q And that parking is for the entire plant, isn't it?

15 A Yes, sir.

16 Q And it's right adjacent to Building 78 and 79 and  
17 right adjacent to this area that has been used for the inciner-  
18 ation and right adjacent to this area where they're going to  
19 put a concrete wall up -- or rather, I'm sorry, an earthen  
20 wall and cover that all with limestone, isn't that correct, sir?

21 A Yes, sir.

22 Q Is it fair to assume that there just might have been  
23 over the years from 1946 to 1985, nearly 40 years, that there  
24 might have been some exposure -- if 2,3,7,8 was found in this

1 area, in this entire area here as these exhibits indicate, and  
2 2,3,7,8 was in this building in a dusty condition and they had  
3 to use vacuum sweepers to remove the dust, if it was found in  
4 that area, isn't it reasonable to assume that the people that  
5 used that parking lot have some exposure to the TCDD in those  
6 areas?

7 A Yes, sir.

8 Q Yes.

9 (At this time Plaintiff's Exhibit 1531 was marked for  
10 identification.)

11 Q I hand you now what's been marked as Plaintiff's  
12 Exhibit 1531, which is captioned Nitro File, Dioxin Cleanup?

13 A Yes, sir.

14 Q Do you recognize that as a Monsanto document?

15 A No, sir.

16 MR. CARR: Your Honor, I'll represent to the Court  
17 that this was among documents supplied to us by Monsanto under  
18 rules of this Court.

19 THE COURT: Are you offering it into evidence?

20 MR. CARR: I am, yes, your Honor.

21 THE COURT: Do you have any objections?

22 MR. HEINEMAN: Well, your Honor, a couple of things.  
23 First of all, this appears to be part of some other document,  
24 it's obviously not complete in and of itself.

1 MR. CARR: I know it's not, and I wish I had the com-  
2 plete document. This is what was given to me.

3 MR. HEINEMAN: Well, you've got --

4 MR. CARR: I wish I did have the complete document.

5 MR. HEINEMAN: You've got what we've got. If this is  
6 all there is, then this is all there is, but I don't know that,  
7 and the witness says he doesn't even recognize it as a Monsanto  
8 document, and therefore, there's obviously been no foundation  
9 laid for its admission into evidence, and I'd object to it on  
10 that basis.

11 MR. CARR: Are you representing that it was not given  
12 to us, Counsel?

13 MR. HEINEMAN: It was obviously given to you, Mr.  
14 Carr.

15 MR. CARR: Is it not part of the business records of  
16 Monsanto?

17 MR. HEINEMAN: Mr. Carr, you certainly know something  
18 about rules of evidence with respect to laying a foundation for  
19 the admission of a document.

20 MR. CARR: The rule is that you may not state something  
21 that is not a fact, Counsel. You know this was supplied to me  
22 as part of the documents and you're now saying that I haven't  
23 proven that it's a Monsanto document? You alleged to me that  
24 it was a Monsanto document.

1 MR. HEINEMAN: Of course it's a Monsanto document  
2 that was produced by Monsanto to you.

3 MR. CARR: Fine.

4 MR. HEINEMAN: But before you get it into evidence,  
5 sir, you have to establish a foundation from the witness stand.

6 MR. CARR: That foundation is all I need to establish.  
7 Counsel, and it has to be relevant, and the document itself  
8 shows that it's relevant.

9 THE COURT: It's admitted over objection.

10 Q Dr. Rousch, this does deal with Building 78 and 79  
11 TCDD cleanup, doesn't it, sir?

12 A Yes, sir.

13 Q And who is Mr. R. A. Baltz?

14 A I don't know.

15 Q And you do know who the O.H. Materials Company is?

16 A Yes, sir.

17 Q That's the same people that were out there in the  
18 second stage of the cleanup at Sturgeon; you know that, don't  
19 you, sir?

20 A Yes, sir.

21 Q And they were selected to -- in 1985, I take it,  
22 there is no data on this document, but in reference in time it  
23 would be sometime after the 1983-84 document that you have,  
24 Document 1527, would it not, sir?

1 A I would assume so.

2 Q And it's dealing with cleaning up Building 78 and 79  
3 in the northern half or top half of Exhibit 1527B, is it not,  
4 sir? (Pause) Doctor, the very first paragraph on that  
5 document refers to it. 78 and 79 you can see is over here,  
6 Building 78 and 79 is the back of Page 15, the last page of  
7 1527, last page, Doctor.

8 A I'm sorry.

9 Q Right there, 79, 78. We went through this Friday.

10 A I just couldn't remember those being the buildings  
11 we talked about.

12 Q We talked about Building 79, but this exhibit talks  
13 about as if it's one building, 78-79, and they are adjoining  
14 one another, aren't they, sir?

15 A I think they're contiguous.

16 Q Yes. And this document talks about going to clean  
17 Building 79 by spraying with water at 3,000 to 4,000 pounds per  
18 second?

19 A Yes, sir.

20 Q I'm sorry, pounds per square inch. Doesn't it, sir?

21 A Yes, sir.

22 Q Building 78 has loose dust and powder in it that  
23 they're going to collect by vacuuming, aren't they, sir?

24 A Yes, sir.

1 Q Doctor, that loose dust and powder in 78 would have  
2 had to have been there since 1969 at the latest, wouldn't it,  
3 sir?

4 MR. HEINEMAN: Objection, that assumes that anybody  
5 knows what in the world it is.

6 THE COURT: Objection is overruled.

7 Q Doctor, insofar as counsel's statement that if anybody  
8 knows what it is, the very first sentence says it's to remove,  
9 to clean the interior of Building 78 and 79 in order to remove  
10 trace amounts of 2,3,7,8 TCDD --

11 A Yes, sir.

12 Q Isn't that exactly what it says?

13 A Yes, sir.

14 Q Can't you conclude from that, although counsel  
15 apparently cannot, can't you conclude from that that the dust  
16 they're going to remove is for the purpose of removing the  
17 2,3,7,8 TCDD?

18 A Yes, sir.

19 Q Can't you conclude from that that 2,3,7,8 TCDD is  
20 in that dust?

21 A Yes, sir.

22 MR. HEINEMAN: My objection still stands, your Honor.

23 THE COURT: Objection is overruled.

24 Q Doctor, these workers that we have discussed earlier

1 and that you have gone over with Mr. Haineman are all workers  
2 that have worked in this plant that's outlined in Exhibit 1527B,  
3 isn't it, sir?

4 A Yes, sir.

5 Q They've all used the parking lot, they've all been  
6 exposed to the fumes and the incineration and the dust from  
7 this area that's paved, they all -- well, they have found  
8 2,3,7,8 TCDD contamination on three sides of this four-sided  
9 plant lot, haven't they, sir?

10 A Yes, sir.

11 Q So the workers that work in this area are in --  
12 nearly surrounded by areas of 2,3,7,8 TCDD contamination,  
13 aren't they, sir, and have been for twenty, thirty, forty years,  
14 isn't that correct, sir? -- not forty years, but since 1949  
15 or thereabouts, '48, '46 up until 1985, just thirty-eight,  
16 thirty-nine years, isn't it, sir?

17 A Yes, sir.

18 Q Is it fair to say that these workers that have been  
19 surrounded by these areas of TCDD 2,3,7,8 contamination have  
20 had exposure to it, sir?

21 A I don't know.

22 Q Can you deduce that from the fact that they're sur-  
23 rounded by it, Doctor?

24 A No, sir.

1 Q You can't deduce that?

2 A No, sir.

3 Q Well, Dr. Moses and Selikoff assumed that there was  
4 exposure, didn't they, sir?

5 A Exposure of what?

6 Q Of what we're talking about. What are we talking  
7 about, Doctor?

8 A These workers.

9 Q Yes, and what are we talking about them being exposed  
10 to?

11 A Dioxin.

12 Q So now you've answered your own question. Could you  
13 proceed with the answer to my question, Doctor?

14 A No, sir.

15 Q You won't proceed or you can't answer it?

16 A I can't answer.

17 Q Did Moses, Selikoff assume they were exposed or not?  
18 You've read the article, Doctor --

19 A Yes, sir.

20 Q You discussed it with Mr. Heineman --

21 A Yes, sir.

22 Q Did they assume these workers were exposed or not?

23 A Not all of them.

24 Q And, Doctor, didn't you last week when I asked you

1 about it, didn't you say that all the workers in that plant  
2 were exposed to 2,3,7,8 TCDD to some extent?

3 A Theoretically.

4 Q You said, you didn't use the word theoretically when  
5 I asked you about it the first time, did you, Doctor?

6 A I don't recall.

7 Q No, what you said was they have all been exposed to  
8 2,3,7,8 TCDD, didn't you, sir?

9 A Not measurably.

10 Q Doctor, I don't care and I'm not using the word  
11 measurably or immeasurably. If it's there, it's there whether  
12 you can measure it or not, it's there, and they were exposed  
13 to it, weren't they?

14 A I don't know.

15 Q You don't know?

16 A No, sir.

17 Q Can you deduce that from the fact that they're  
18 surrounded by it, sir; and they've been working there for thirty  
19 or forty years?

20 A I don't know.

21 Q Would your mind tell you that to deduce that, Dr.  
22 Rousch?

23 A I don't know.

24 Q Doctor, I'm not asking you whether or not you know

1 whether or not they were exposed. I'm asking you whether your  
2 mind will deduce that. You know what your mind will do. Can  
3 your mind deduct from these facts, deduce from these facts, sir,  
4 that they've had some exposure through the years that they've  
5 worked in that plant? Would your logical mind tell you that,  
6 Dr. Rousch?

7 A I don't know.

8 Q You don't know whether or not your mind would tell  
9 you that?

10 A No.

11 Q You have --

12 A I can't make a decision.

13 Q You can't make a decision on that?

14 A No, sir.

15 Q So your mind doesn't tell you that? You haven't the  
16 capacity in that mind that's been a trained, scientific mind  
17 for all these years to deduce that people that have been working  
18 in an area that's surrounded by TCDD contamination and the wind  
19 blows and the rains run and the water washes off of this area  
20 that they're putting this big concrete, earthen dike up there,  
21 and the incinerator burns materials, and cars pass in and out,  
22 and men walk in and out this dusty plant, they walk to lunch  
23 rooms, they walk to rest rooms, they walk to the parking lot,  
24 cars drive up and down, trucks drive up and down, all these

1 thirty and forty years, your mind wouldn't tell you that they  
2 have some exposure to 2,3,7,8 TCDD if it's there? Your mind  
3 won't tell you that, Dr. Rousch?

4 A I don't know, I don't think so. I can't decide.

5 Q Your mind wouldn't tell you that?

6 A Not at levels like this. I don't know how to do that.

7 Q Doctor, now you're talking about low levels again.  
8 Let's talk about the same thing. I'm not talking about high or  
9 low levels, I'm talking about exposure to 2,3,7,8 TCDD to what-  
10 ever extent.

11 A I understand.

12 Q Does your mind tell you, sir, and don't go back to  
13 that other measurable business again, because I've laid that to  
14 rest, do you understand, I'm not asking about that anymore,  
15 that's at rest. Now, does your mind tell you that these workers  
16 have some exposure to 2,3,7,8 TCDD?

17 A It's possible.

18 Q Yes. Doctor, these facts that we've gone into here,  
19 all these were things that were known to the people at the  
20 Nitro Plant or could have been known if they looked, if they  
21 were trying to find out if somebody was exposed, could have  
22 been known to the people at the Nitro Plant that helped work  
23 with Dr. Suskind, couldn't they, sir?

24 MR. HEINEMAN: Objection, sir, all of these things,

1 all of what things?

2 THE COURT: Objection is overruled. It's clear in  
3 the context. Answer the question, Doctor.

4 Q Isn't that correct, Doctor?

5 A If they had known that contamination, they could have  
6 told them, yes.

7 Q Doctor, this contamination was known in 1983, wasn't  
8 it, sir?

9 A Yes, sir.

10 Q And the Suskind report didn't come out until the  
11 spring of -- until May of last year, isn't that right, sir?

12 A Yes, sir.

13 Q Sir?

14 A Yes.

15 Q Now, Doctor, Dr. Moses, Selikoff found 30 cancers in  
16 this group of people that Suskind found a total of 20 cancers;  
17 do you recall that, sir?

18 A Yes, sir.

19 Q Now, and Dr. Suskind had the cooperation of all the  
20 Dr. Moses-Selikoff had was some limited records and the men,  
21 Monsanto had the men and the plant records as well, didn't they,  
22 sir, which they helped give to Dr. Suskind?

23 A Yes, sir.

24 Q Now, how do you suppose it was that we going through

1 the records found 28 cancers, going through Dr. Suskind's records  
2 found 28 cancers as being reported by history which we went  
3 through --

4 A Yes, sir.

5 Q Moses-Selikoff found 30, but yet Suskind reports only  
6 a total of 14 on the exposed group and 6 in the unexposed group  
7 for a total of 20? Doesn't that strike you as strange, Dr.  
8 Rousch?

9 A No, sir, I went through those records --

10 Q Doesn't it strike you as strange?

11 A No, sir.

12 Q All right. Now, Doctor, now you've gone through the  
13 exhibit with Mr. Heineman, and you've eliminated certain of  
14 these persons that you had put along with -- under my inter-  
15 rogation you put 27 and possibly 28 cancers in this group;  
16 do you recall that, sir?

17 A Yes, sir.

18 Q Now, you eliminated approximately 12 of those --  
19 more than that, 13 or so of those 28 cancers, didn't you, sir?

20 A I didn't add up the numbers.

21 Q Oh, didn't you add them up, Doctor, to come out  
22 exactly like Suskind did, come out with 14?

23 A I had more question marks than that.

24 Q You ultimately eliminated 13 cancers. You did that

1 in eliminating two of them with one stroke on Scarberry, didn't  
2 you?

3 A Yes, sir.

4 Q Now, Scarberry is the one that you said you talked  
5 to Hertzberger, and they counted as lung and bowel cancer; do  
6 you recall that, sir?

7 A No, sir.

8 Q You don't recall testifying that on the 9th of July,  
9 1985 at Page 106 relative to Scarberry, and your answer to that  
10 question that he's listed according to the interpretation you  
11 got from Hertzberger as having had lung cancer and bowel cancer,  
12 is that correct, sir, and your answer was yes. Do you recall  
13 testifying that way?

14 A I don't remember it, but if I -- what I said was  
15 I just had talked to her.

16 Q Yes, and you talked to her, and she said that Scarberry  
17 had lung and bowel cancer, didn't she, and that they treated  
18 him as such?

19 A I don't recall that.

20 MR. HEINEMAN: Objection, your Honor.

21 A I don't recall that.

22 MR. HEINEMAN: The testimony refers to the computer  
23 printout and the fact that there's a listing there for lung and  
24 bowel on the printout, that's what the testimony, that's what

1 the question is.

2 Q Isn't that what you got from Dr. Hertzberger?

3 A I don't recall that, sir.

4 THE COURT: Objection is overruled.

5 Q You want to look at it and see if it refreshes your  
6 memory? Right there, sir.

7 A I don't know the basis of what my interpretation of  
8 what Dr. Hertzberger had said.

9 Q Well, would you look at Exhibit 1472 and look at  
10 Scarberry right in here. New ID Number 118, do you see that?

11 A Yes, sir.

12 Q And you see the computer lists Scarberry as having  
13 lung cancer and bowel cancer?

14 A Yes, sir.

15 Q And do you recall now that you talked to Miss Hertz-  
16 berge about interpreting this computer printout, and you helped  
17 us with that interpretation?

18 A No, sir.

19 Q You don't recall that?

20 A I don't remember talking about Scarberry with her.

21 Q Do you recall talking about how to interpret the  
22 computer printout?

23 A Yes, sir.

24 Q And she told you that where they have a V701 or 702

1 number that that means there was a confirmed cancer; do you  
2 recall that, sir?

3 A No, that doesn't -- I don't know what that means.  
4 It says on that list that there was a lung and bowel, and I  
5 don't know what that means when the 701 and 702 is there.

6 Q You don't recall telling us after you talked to her  
7 that that means when you have that number there, that means  
8 there was a confirmed cancer?

9 A No, sir.

10 Q Doctor, when you get away from Court here, do you  
11 deliberately put out of your mind what things you've testified  
12 to earlier?

13 A No, sir.

14 Q You do recall talking to Hertzberger and Hertzberger  
15 telling you how to interpret this tape?

16 A How to interpret the tape, yes, that's right.

17 Q And you do recall telling us that when it has that  
18 number there, V701, that that means a skin cancer, and V702  
19 means some other kind of cancer, that those numbers refer to  
20 cancers?

21 A Yes, but I'm not sure the basis for that decision.

22 Q Doctor, a basis for whose decision, your decision or  
23 Hertzberger's?

24 A Or her decision. I'm not sure whether they're saying

1 that there was a history of it or that was their conclusion that  
2 that's what it meant.

3 Q Doctor, the conclusion is is what you got from Hertz-  
4 berger.

5 A I don't know what that V701 means. I have to know  
6 that before I can answer the question.

7 Q Doctor, do you recall your testimony when you said  
8 you had called Vicki Hertzberger at lunch time?

9 A Yes, sir, and she did say that one is for skin and  
10 the other was for others, and I don't recall what those numbers  
11 mean.

12 Q Now, Doctor, on Page 93 of the July 9th testimony,  
13 Counsel, I asked you, "Well, did she advise you that the item  
14 before that, we're talking about Woodall at this time, and I've  
15 lost him on this printout, No. 167, did she advise you that  
16 the numbers before that where it says V701 skin, that that  
17 indicates a skin cancer"? And your answer was "Yes, sir."

18 A Yes, sir.

19 Q Do you recall that being your testimony?

20 A I do -- I know that, but I'm not sure what that  
21 means, what V701 means. It doesn't mean --

22 Q Well, the next question.

23 A All right.

24 Q Where it says skin cancer history, no, cancer history,

1 no, it was the advice you received that the figures before that,  
2 in front of that, that would be 701 equals skin, indicate that  
3 there was a history of skin cancer, is that correct, sir? Yes.

4 Well, would that be true, say, of the one above  
5 Matheny where it says 701 bowel, that would indicate a bowel  
6 history?

7 Yes, sir.

8 And here up where we have ID 113, Scarberry, we haven't  
9 talked about Scarberry, it says there, that would be lung and  
10 bowel cancer?

11 And your answer was, I think that's yes.

12 Do you recall all those questions and those answers?

13 A Yes, but not --

14 MR. HEINEMAN: Objection, your Honor, the prior ques-  
15 tion was doesn't that indicate a confirmed cancer was the way  
16 Mr. Carr asked the question, and this testimony talks about  
17 history.

18 THE COURT: Objection is overruled.

19 Q Don't you recall all that as your testimony, Dr.  
20 Rousch?

21 A Yes, that's history, that's what I thought.

22 Q Doctor, that's all we're talking about. The whole  
23 table deals with just history of skin cancer, it's titled History  
24 of Skin Cancer. None of your doctors, Suskind and no one else

1 went in there and did a biopsy, they weren't there. All they  
2 could go by was by history.

3 A Yes, sir.

4 Q And Dr. Hertzberger told you that the V701 and the  
5 V702 indicates a confirmed history of cancer, doesn't it, sir?

6 A No, sir, it doesn't say confirmed history.

7 Q Well, history of cancer then.

8 A Yes, sir.

9 Q Isn't that what it means?

10 A Yes, sir.

11 Q And what you use, this printer, this computer printout  
12 and the other records that you have to determine whether or not  
13 a person had a history of skin cancer, isn't that correct, sir?

14 A Yes, sir.

15 Q And she -- based upon what she told you then,  
16 Scarberry has a history of lung and bowel cancer, doesn't he,  
17 sir?

18 A Yes, sir.

19 Q Now, you eliminated him from the list that you pre-  
20 pared along with Mr. Heineman.

21 A Yes, sir.

22 Q Didn't you, sir?

23 A Yes, sir.

24 Q In the face of this history of skin cancer, didn't

1 you, sir?

2 A Yes, sir.

3 Q And bowel cancer?

4 A I did that independently, yes, sir.

5 Q Well, you had -- you weren't referring to the computer  
6 printout when you eliminated Scarberry, were you, sir?

7 A No, sir.

8 Q And the computer printout shows how Suskind recorded  
9 it, that his printout, isn't it, sir?

10 A Yes, sir.

11 Q And we're talking about what Suskind reported to us,  
12 we're talking about whether or not he was honest in reporting  
13 14 cancers in the exposed group when in fact there was 27 or 28.  
14 That's what this entire exercise is about, Dr. Rousch, isn't it,  
15 sir, whether he's honest or Monsanto is honest in this inter-  
16 pretation?

17 A No, sir.

18 Q They told you that Scarberry, the records on Scarberry  
19 should be interpreted, the records that they have and they gave  
20 us should be interpreted as having lung and bowel cancer,  
21 didn't they, sir?

22 A Yes, sir.

23 Q And if those records are to be interpreted that way,  
24 then Scarberry should be on the list, shouldn't he, sir, as

1 having a history of cancer?

2 A If they're right, yes.

3 Q Yes, if they're right. That's all we're going by is  
4 what they've got, aren't we, sir?

5 A Yes, sir.

6 Q You haven't made any independent investigation, have  
7 you, sir?

8 A No, sir.

9 Q You're looking at something less than they looked at,  
10 aren't you, sir?

11 A Yes, sir.

12 Q Yes. Now, Doctor, you eliminated in addition to  
13 Scarberry, you eliminated Reynolds, didn't you, sir?

14 A Yes, sir.

15 Q Now, Reynolds you testified to on the 9th of July  
16 that it's possible that he had exposure because he was respon-  
17 sible for transportation of the raw materials, finished products,  
18 responsible for receiving raw materials in containers and that  
19 he would have a history of exposure, and you said yes, possible  
20 exposure, didn't you, sir?

21 A Yes, sir.

22 Q Now, if he's got, if he's been a shipping foreman for  
23 three years in the warehouse, he surely would have had an  
24 opportunity to be exposed to 2,4,5 T, would he not, sir?

1 A Possible.

2 Q And therefore, he should be in the exposed group,  
3 shouldn't he, sir?

4 A I don't think so.

5 Q Doctor, the entire exercise is to find out whether or  
6 not those people who had possible exposure in fact had any  
7 history of cancer. That's what it's all about, isn't it, sir?

8 A Yes, sir.

9 Q You don't know that anybody from your own definition,  
10 you don't know that anybody actually had exposure, do you, sir?

11 A Those who worked in the unit I sure would say were  
12 exposed.

13 Q You don't know that though, do you, sir? You just  
14 deduced that from the fact they work in an area where there is  
15 2,4,5 T, don't you, sir?

16 A Yes, sir.

17 Q That's something that your mind tells you?

18 A Yes, sir.

19 Q So your mind has told you that they are exposed to it,  
20 and your mind tells you that a man that works -- he was a  
21 foreman that works for years in the department where they ship  
22 the stuff out after it's made, he, too, has a good possibility  
23 of exposure, that's what your mind tells you, doesn't it, sir?

24 A Some possibility.

1 Q Well, have you got some possibility, but you eliminated  
2 him from this group, didn't you, sir?

3 A I put him in the questionable group that Suskind had.

4 Q Well, but you eliminated --

5 A I put him in Suskind's questionable group.

6 Q Suskind didn't have a questionable group.

7 A When he got down and finished it he had -- there was  
8 about 50 of them he left out because he couldn't decide whether  
9 they were exposed or not.

10 Q 50 cancers left out?

11 A No, sir, 50 people.

12 Q Were these 50 sick people, do you know, that he left  
13 out?

14 A No, sir.

15 Q What did they have wrong with them besides cancer?

16 MR. HEINEMAN: Objection. There's no indication they  
17 had cancer at all.

18 MR. CARR: Reynolds had cancer, and he was left out,  
19 wasn't he?

20 THE COURT: Objection is overruled.

21 Q Besides cancer what did they have wrong with them?

22 A That was decided before they did their evaluation  
23 whether they're ill or not, that was done separately. The  
24 definition of these cohorts --

1 Q It was done separately, Doctor?

2 A Yes.

3 Q Wasn't it actually done all at the same time?

4 A But by --

5 Q Wasn't it done at the same time, Doctor?

6 A No.

7 Q Doctor, at one time didn't -- didn't Suskind have a  
8 group that he calls questionable exposure?

9 A Yes, sir.

10 Q But he eliminated that, didn't he, sir?

11 A Yes, sir.

12 Q Now, he knew the health of those people when he  
13 eliminated that questionable exposure, didn't he, sir?

14 A I don't think so.

15 Q Doctor, he had created a final draft, a draft already.  
16 He had to know.

17 A But that was --

18 Q You saw the draft, didn't you, sir?

19 A Yes, sir.

20 Q So he had to know whether or not those people had  
21 possible exposure and their health history, didn't he? He had  
22 already made tables, he had made the porphyrin tables, so he  
23 absolutely knew what was wrong with those people when he elimi-  
24 nated these 50 from that study, didn't he, sir? Didn't he, sir?

1 A I don't know when he eliminated them from the discussion.

2 Q You know he eliminated them after he created the  
3 health tables, after he had his text written for the first and  
4 second time. He eliminated those people in the third and final  
5 draft, didn't he, sir?

6 A Yes, sir.

7 Q He had two drafts prepared before that.

8 A Right.

9 Q So don't tell me that they didn't know the health  
10 status of those 50 people. They knew the health status and they  
11 eliminated them.

12 A Yes, sir.

13 Q Doctor, you eliminated Volz, didn't you, sir?

14 A No, sir.

15 Q You eliminated his bladder cancer, you gave him the  
16 skin cancer?

17 A Oh, yes.

18 Q But you eliminated the bladder cancer?

19 A Yes, sir.

20 Q Doctor, why did you eliminate the bladder cancer?

21 A Because it was a benign tumor.

22 Q And does it say benign tumor in the Volz records?

23 A I think so.

24 Q Do you have -- could you give Group Exhibit 1468

1 to the witness.

2 (Pause)

3 A I'll need the number, sir, if it's in here.

4 Q 52.

5 A Pardon?

6 Q 52, and his name is written on it anyway.

7 A All right.

8 Q Now, Doctor, the question that's -- first of all,  
9 the interviewer is what kind of person, the person that takes  
10 these medical histories?

11 A I think they were both -- there are at least two  
12 of them, and they were nurses.

13 Q Registered nurses?

14 A Yes, sir.

15 Q Yes. And they were trained presumably in interviewing  
16 and making sure that the facts they got were as full and complete  
17 as they could get -- as they could get?

18 A Yes, sir.

19 Q And they know the difference between a -- well,  
20 first of all, tumors or either -- when you say tumor, you can  
21 mean either a cancer or a non-cancerous growth, can't you, sir?

22 A Yes, sir.

23 Q So just saying tumor doesn't tell you whether or not  
24 it is or is not cancerous, does it, sir?

1 A That's right.

2 Q Now, the questioner asks "Have you ever been told by  
3 a doctor that you had or have any type of cancer", doesn't it,  
4 sir, Page 13?

5 A Yes, sir.

6 Q Now, they're not asking whether or not the employee  
7 believes that he has a cancer, they're asking a question, a  
8 trained registered nurse asking the question whether or not  
9 they've ever been told by a doctor that he had cancer?

10 A Yes, sir.

11 Q Now that doctor would know better whether or not that  
12 was a cancer than you some years later or an interviewer some  
13 years later, wouldn't they, sir, the doctor that looked at  
14 the tissue to start with and that treated the person?

15 A If the doctor had said it, yes.

16 Q That's what you're asking, if the doctor said it,  
17 aren't you, sir?

18 A Yes, sir.

19 Q Did anybody go back and check with the doctor to see  
20 whether or not the doctor said it?

21 A No, sir.

22 Q Now Mr. Volz told your interviewer that a doctor had  
23 told him that he had bladder and skin cancer, didn't he, sir?  
24 I'm sorry, bladder cancer.

1 A Yes, sir.

2 Q And your doctor interviewer who got additional history  
3 -- now, to put it in proper perspective, the personal medical  
4 history is the history that's taken officially, it has a whole  
5 list of things of what you had wrong with you and when you had  
6 wrong with you?

7 A Yes, sir.

8 Q And when you had it, right?

9 A Yes, sir.

10 Q And in that Mr. Volz said that he had been told by a  
11 doctor that he had bladder cancer, didn't he, sir?

12 A Yes, sir.

13 Q Now later on there's additional history taken, isn't  
14 there, sir?

15 A Yes, sir.

16 Q Now, it's not instead of, it's more history, isn't it,  
17 sir?

18 A Yes, sir.

19 Q And that more history revealed that he also had a  
20 basal cell carcinoma, doesn't it, sir? Page 21, Dr. Rousch.

21 A Yes, sir.

22 Q And that's where you come up with the skin cancer,  
23 correct, sir?

24 A Yes, sir.

1 Q Now on Page 23 there is additional history taken with  
2 reference to the bladder?

3 A Yes, sir.

4 Q Now, there is written in there bladder tumor 1951  
5 removed, no recurrence, annual cystogram then in parenthesis  
6 above it, benign?

7 A Yes, sir.

8 Q Now, how would that doctor know in 1979 when he's  
9 taking this additional history from Mr. Volz that it wasn't  
10 cancer when Mr. Volz was told that it was cancer that he had in  
11 1951?

12 A I don't know.

13 Q Yes. The original doctor is one that would know  
14 whether or not it was cancerous or not, wouldn't he, sir?

15 A Yes, sir.

16 Q You can't look at a person's body who's had a tumor  
17 removed from the bladder or that matter a tumor removed from the  
18 skin, you can't look at that person and say -- tell by looking  
19 at them whether that was a cancerous growth that was removed  
20 from the skin or a cancerous growth that was removed from the  
21 bladder, can you, sir?

22 A No, sir.

23 Q And so the additional physical examination that takes  
24 place, both of the skin and of the body, doesn't tell the doctor,

1 Q And they have to look under -- they have to stain  
2 it and look under a high powered microscope and do other things  
3 before they can -- and it takes hours for them to -- some-  
4 times days for them to even be sure of that diagnosis, doesn't  
5 it, sir?

6 A Yes, sir.

7 Q And they report back to the doctor that's taking care  
8 of the patient and say, well, this was malignant, this was  
9 cancerous or this was not cancerous, doesn't it, sir?

10 A Yes, sir.

11 Q But the history that Volz gave was that he was told  
12 that it was a bladder cancer, isn't that the history that he  
13 was told?

14 A That's what he told the nurse.

15 Q Are there any medical records connected to these?  
16 We had them in the case of Hein where he talked about this  
17 carcinoma --

18 A Yes.

19 Q Are there any other additional medical records here  
20 to tell you that this was not a cancer that that doctor reported  
21 to Mr. Volz?

22 A Only what the doctor reports.

23 Q Yes, only that, and the doctor reports what Volz said?

24 A Yes, sir.

1 Q And Volz said it was cancerous, didn't he?

2 A You can't rationalize those two.

3 Q Excuse me. Volz said it was cancerous, wasn't it,  
4 sir?

5 A He also told --

6 MR. HEINEMAN: You mean to the doctor?

7 A -- told this doctor.

8 Q Sir?

9 A He told the doctor as well.

10 Q What did he tell the doctor?

11 A That he had a benign bladder tumor.

12 Q No, the parenthesis is added there by the doctor, he's  
13 doing the interpreting of what Volz gives him, isn't he, sir?

14 A On Page 25 he says benign bladder tumor.

15 Q That's what the doctor that examined Volz said.

16 A What the doctor says on history.

17 Q Excuse me, the doctor that examined Volz said that.

18 A Yes, sir.

19 Q And not the doctor that did the operating?

20 A That's right.

21 Q Yes. Now, Doctor, let's look at Honaker, another one  
22 that you eliminated a cancer. Now on Honaker you've agreed  
23 that Honaker had leukemia and prostate cancer, didn't he?

24 A Yes, sir.

1 that. We've already showed you that in the Moses-Salikoff group  
2 the last person reported had leukemia and prostate cancer --

3 A Yes, sir.

4 Q Do you recall that, sir? That's the same person here  
5 that we're talking about?

6 A Yes, sir.

7 Q So it's the same group, Doctor, and was supposed to  
8 be the same group, only the Moses-Salikoff people didn't have  
9 access --

10 MR. HEINEMAN: Objection, your Honor, there's absolutely  
11 no evidence that it's the same group examined, none.

12 MR. CARR: Your Honor, both studies deal with the  
13 workers at Nitro Plant who were supposed to have been exposed.  
14 The Moses-Salikoff group goes by -- not by work history, per  
15 se, but by acne, chloracne, and the morbidity study by Suskind  
16 also uses chloracne and talks about the same group. The intro-  
17 duction to each and the cohort in each is the same group.

18 MR. HEINEMAN: Your Honor --

19 MR. CARR: They're not identical, but they're taken  
20 from the same group of workers.

21 MR. HEINEMAN: They're taken from the same plant, but  
22 they're not -- there's no, absolutely no evidence that they  
23 are the same group.

24 THE COURT: Objection is overruled. There is evidence

1 in the record. You may proceed.

2 Q Dr. Rousch, didn't you and Heineman bring up the  
3 Moses-Selikoff study to be talking about the Nitro workers?

4 A Yes, sir.

5 Q And you meant to bring it up to show what 2,3,7,8  
6 TCDD either does or does not do to your group of people at Nitro,  
7 doesn't it, sir?

8 A Yes, sir.

9 Q And you tried to include all of your Nitro workers in  
10 your morbidity study by Suskind, sir, except those that had  
11 terminated before '55?

12 A We had those before then.

13 Q Isn't that correct, sir?

14 A If they were working and had started before 1955 --

15 Q Now, Doctor --

16 A They would be part of the study. They went back and  
17 --

18 Q The Selikoff table would appear that this group of  
19 people, these workers in this plant are healthier than what it  
20 would appear in the Moses-Selikoff study, doesn't it, sir; 20  
21 cancers as opposed to 30? The Suskind study shows the people  
22 to be healthier than the Moses-Selikoff group, isn't it, sir,  
23 if you look at their cancer history?

24 A At cancers, that's right.

1 Q Now, is it an advantage to Monsanto in its dealings  
2 with its workers, its dealings with the world as far as dioxin  
3 is concerned to show that the people who are exposed to TCDD in  
4 the Nitro Plant are healthier or less healthy, which is to  
5 Monsanto's advantage?

6 A To show there's no cancer or --

7 Q To show fewer cancers?

8 A Yes, sir.

9 Q Isn't that correct, sir? And would you say that the  
10 Suskind report of 14 cancers or 20 cancers in the total group  
11 is more advantageous to Monsanto than the Moses-Selikoff report  
12 of 30 cancers?

13 A No, sir.

14 Q Sir?

15 A No, sir.

16 Q You would say it's not?

17 A No, sir.

18 Q Well, it shows a healthier group of people, doesn't  
19 it, with fewer cancers, doesn't it?

20 A Yes, sir.

21 Q And therefore that's to Monsanto's advantage, isn't  
22 it, sir? You just got through saying that, didn't you, sir?

23 A Yes, sir.

24 Q Now, Doctor, on Lowell West you eliminated, according

1 to Mr. Seigfreid's notes you eliminated a skin cancer, didn't  
2 you, sir? That's No. 89.

3 THE COURT: Before we get him is this a good point  
4 for a short break?

5 MR. CARR: Surely, your Honor.

6 THE COURT: Ladies and gentleman, we'll take a short  
7 recess at this time. I would remind you, and this would go for  
8 any other breaks we take during the day, that you're not to  
9 discuss this among yourselves, with anyone outside the jury  
10 panel or as of yet form any opinions or conclusions about the  
11 matters on trial. Court will be in a short recess.

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

13 DR. GEORGE ROUSCH,

14 resuming the witness stand, having been previously sworn,  
15 testified further as follows:

16 RE CROSS EXAMINATION (Continued)

17 BY MR. CARR:

18 Q Doctor, the next one I'd like to ask you again on  
19 review would be Lowell West. It's No. 89. Did you find that,  
20 sir?

21 A Yes, sir.

22 Q Mr. West gave a history of skin cancer, did he not?

23 A Yes, sir.

24 Q There is nothing in the record to take away from that

1 history that he gave, is there, sir, no additional history that  
2 he did not have skin cancer?

3 A The physician when he did his examination didn't even  
4 mention it.

5 Q My question is is there anything in the record to  
6 take away from the fact that Mr. West reported to your inter-  
7 viewer that the doctor had told him that he had skin cancer in  
8 1958?

9 A I'd say it's inconsistent with the doctor's report.

10 Q What did the doctor say that's inconsistent with --  
11 what did the examining doctor say so we can get it straight,  
12 keep it in order, what did he say that was inconsistent with  
13 the -- what the treating doctor said was skin cancer in 1958?

14 A He made no mention of skin cancer.

15 Q He didn't say that there was not skin cancer did he?

16 A No, sir.

17 Q And the history that you're looking at where he --  
18 where you say he made no mention of it is that called additional  
19 history, isn't it, sir?

20 A No, sir.

21 Q Doctor, look at Page 21.

22 A Yes, sir.

23 Q That is the -- what you're referring to, is it not?

24 A Yes, sir.

1 Q Sir?

2 A Yes, sir.

3 Q And what does it say on that page, Doctor? What does  
4 it describe the history being taken on that page?

5 A He says he had, I think it's chloracne.

6 Q What does it describe, what does that page describe,  
7 what's it listed -- it uses the words additional history,  
8 does it not?

9 A Right, yes, sir.

10 Q Yes, that's as I've asked you a moment ago that you  
11 said it wasn't though, it is though, it's talking about addi-  
12 tional history, isn't it, sir?

13 A Yes, sir.

14 Q Now, is there any additional history taken that's  
15 given there, sir, that takes away from the original history  
16 that was given in the history section, personal medical history  
17 section, that takes away from the fact that he says a doctor  
18 told him that he had skin cancer two times as a matter of fact  
19 in 1958?

20 A The doctor didn't mention that he had skin cancer.

21 Q All right. But he did not say that that history was  
22 inaccurate, did he, sir?

23 A No, sir.

24 Q And, Doctor, if you will look at the computer study,

1 1472, for West, ID No. 89, you see that he -- the computer  
2 lists him as having skin cancer, history of skin cancer, does  
3 it not, sir?

4 A Skin cancer.

5 Q Sir?

6 A I don't know whether it's history of skin cancer or  
7 skin cancer.

8 Q It says V701 equals skin, doesn't it, sir?

9 A Yes, sir.

10 Q And don't you remember we established that Hertzberger  
11 told you that means a history of skin cancer? Remember we just  
12 went through that before the break, Dr. Rousch?

13 A Yes, and I didn't remember it then and I still don't.

14 Q You do recall --

15 A I do know --

16 Q -- reading your testimony, didn't you, Doctor?

17 A Yes, sir.

18 Q And you did testify that way under oath on July the  
19 9th, didn't you, sir?

20 A Not that Hertzberger told me that.

21 Q Doctor, didn't you testify that Hertzberger told you  
22 that those numbers, V701-skin, means a history of skin cancer?  
23 I just read it to you, and I handed it to you and you read it  
24 yourself.

1 A The next one says --

2 Q Excuse me, Doctor, you're on another point. Now,  
3 let's get that point settled. Didn't you just read that this  
4 morning that that's what Hertzberger told you?

5 MR. HEINEMAN: Objection, your Honor, it's with  
6 respect to one particular person and he's referring to that  
7 record.

8 THE COURT: Objection is overruled. It wasn't framed  
9 that way. Answer the question, Doctor.

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

11 A I'm sorry.

12 Q You weren't paying the least bit of attention to what  
13 I was asking. Do you have any idea what I asked you, sir?

14 A Yes, sir.

15 Q I asked you whether or not you just testified this  
16 morning, you just read your testimony this morning that Hertz-  
17 berger told you that the V701 letters and the dash behind it  
18 skin or dash behind it leukemia or dash behind it bowel means  
19 cancer of those organs.

20 A I'm not sure.

21 Q You're not sure that you just saw it this morning,  
22 sir?

23 A Yes, sir.

24 Q You don't recall me showing you the transcript?

1 A Yes, sir.

2 Q And you read it, didn't you?

3 A Yes, sir.

4 Q You read what you said?

5 A But it wasn't complete.

6 Q Sir?

7 A It's not complete what I read.

8 Q What I gave you is the complete transcript. That's  
9 the only transcript we have, Doctor.

10 A I understand.

11 Q And it was your answer, wasn't it, sir, at that time  
12 under oath on July the 9th?

13 A What's --

14 Q Wasn't it, sir?

15 A What?

16 Q The answer that you gave on July the 9th was your  
17 answer to the question, and you said at that time that Hertz-  
18 berger told you that that means skin cancer, those numbers  
19 there, V701, means it's a cancer, a history of cancer. Do you  
20 recall that? Mr. Heineman said no, I was using the words that  
21 it was confirmed skin cancer, and he said no, that's history,  
22 and I said yes, that's right, it's a history of skin cancer,  
23 those numbers mean that. We just went through that through  
24 the break.

1           A     But we're back on whether this means skin cancer or  
2 not.

3           Q     Doctor, you're not listening to my question. My ques-  
4 tion is not what you believe today this means or doesn't mean.  
5 My question is is what you said this morning and on July the  
6 9th that Hertzberger told you that it meant. Could you listen  
7 to me, Doctor?

8           A     Yes, sir.

9           Q     Now, Hertzberger told you according to your testimony  
10 on July the 9th that meant history of cancer, didn't she, sir?

11          A     Yes.

12          Q     Yes. Now, Doctor, and West is listed in Suskind's  
13 computer tape printout as having V701 equals skin cancer, correct,  
14 sir?

15          A     Yes, sir.

16          Q     And Hertzberger told you that that meant that he had  
17 history of skin cancer, didn't she?

18          A     With that connotation, yes.

19          Q     Yes. Now, Doctor, he's listed in the only record that  
20 you have, the questionnaire that he filled out that a doctor  
21 told him he had skin cancer, he's listed in Suskind's computer  
22 summary, bring together of all the information in Suskind's  
23 computer printout as having a history of skin cancer, isn't  
24 that right, sir?

1 A Yes, sir.

2 Q And you have no document anywhere that says that he  
3 did not have skin cancer, all you have is that another doctor  
4 in additional medical history didn't mention it one way or the  
5 other --

6 A Yes, sir.

7 Q Isn't that correct, sir?

8 A That's right.

9 Q All right. Doctor, the next one that you referred to  
10 was Hill, was it not, sir, or the next one that you eliminated  
11 a cancer would have been Keith Hill. His ID number would be  
12 133.

13 A What number was that?

14 Q 133, Keith Hill. It will have a three page medical  
15 discharge summary paper clipped to it on the top. There it is.  
16 Doctor, that -- you eliminated the bladder cancer history on  
17 Hill, did you not, but you included the skin cancer? Do you  
18 recall that, sir?

19 A No, sir.

20 Q Well, look at the records and see, first of all, if  
21 there is not medical records there which it says on March 22nd,  
22 1976, the second page of the exhibit that you have in your hand,  
23 Doctor, the second page --

24 A Right.

1 Q You got the second page?

2 A Yes, sir.

3 Q It says March 22nd, '76 in the right-hand corner?

4 A Yes, sir.

5 Q And then it says history of carcinoma of the bladder,  
6 rule out recurrence?

7 A Yes, sir.

8 Q See where it says that?

9 A Yes, sir.

10 Q And they do an operation, a cystoscopy and a pantoscopy,  
11 and they have the same post-operative diagnosis. They say no  
12 recurrence seen, don't they, sir?

13 A Yes, sir.

14 Q And that is a statement that he has a history of  
15 carcinoma of the bladder, isn't it, sir?

16 A Yes, sir.

17 Q And, Doctor, you eliminated when you discussed with  
18 Mr. Heineman any bladder cancer history, didn't you, sir?

19 A Yes, sir.

20 Q Thank you, sir. The next one that you eliminated  
21 would have been a skin cancer to Rogers and that would be No.  
22 422. Have you got that one?

23 A Yes, sir.

24 Q And you eliminated him because you said there was,

1 if I remember your testimony correctly, he had no history of  
2 exposure or did you, sir?

3 A I don't have my notes.

4 Q Well, you want to look at the record then and tell us  
5 what you would --

6 A Yes, sir.

7 Q -- say about Mr. Rogers? Is he exposed or not?

8 A On history he said he was not exposed.

9 Q Now, Doctor, you testified relative to Mr. Rogers  
10 when I asked you questions that he was exposed. Do you recall  
11 that, sir?

12 A This is a case of whether you can say no exposure  
13 versus some or possible exposure.

14 Q Yes. Now, you said directly that -- in your testi-  
15 mony with Mr. Heineman that he was not exposed?

16 A Yes, sir.

17 Q And the history doesn't say that he was not exposed,  
18 does it, sir?

19 A I think the fact that he was transportation foreman  
20 and receiving supervisor that said he wasn't exposed.

21 Q Doctor, what did he do from 1949 to 1953?

22 A He was foreman -- he was shipping.

23 Q He worked in the shipping from -- for the first  
24 three years as a warehouse man from 1949 to 1951, didn't he,

1 sir?

2 A Yes, sir.

3 Q What did they ship out in that period of time when he  
4 was a worker?

5 A All the products that were made at Monsanto.

6 Q And was 2,4,5 T one of those products that was made?

7 A Yes, sir.

8 Q And did he then work with 2,4,5 T that was made, sir,  
9 at that plant from '49 to '51?

10 A I'm not sure what the foreman -- of the 2,4,5 T?

11 Q Did he work with 2,4,5 T in that three year period of  
12 time, sir?

13 A I don't know.

14 Q Sir?

15 A I don't know.

16 Q If he was working in the Shipping Department and he  
17 was shipping out 2,4,5 T, wasn't he working with it, Dr. Rousch?

18 A Not necessarily.

19 Q Well, do you have anything that says that he wasn't  
20 working with it? The evidence that you have is that he was  
21 working with it. You have nothing to the contrary, do you,  
22 sir?

23 MR. HEINEMAN: Objection, your Honor, I don't think  
24 the witness agrees.

1 A I don't believe --

2 MR. CARR: I'm asking him.

3 Q Where do you have something to the contrary that says  
4 he was not working with 2,4,5 T shipping it out from the ware-  
5 house?

6 THE COURT: Objection overruled.

7 MR. HEINEMAN: Your Honor, I didn't get to finish my  
8 objection.

9 THE COURT: I thought you had.

10 MR. HEINEMAN: My objection to the question was Mr.  
11 Carr was assuming that there was nothing in the evidence or  
12 that the evidence established that he was working with 2,4,5 T,  
13 and I don't think there's anything in the evidence, in the  
14 record to establish that, and that's what I was objecting to.

15 THE COURT: Objection is overruled. The question was  
16 proper.

17 A I don't believe that he had exposure to 2,4,5 T even  
18 if he was shipping the material, because it was put into drums  
19 and vats and bags before, and all they would, they bring them  
20 in on dollies and take them out on dollies, and there was no  
21 exposure taking place.

22 Q Doctor, do you recall that the area all in the --  
23 these buildings where they were shipping this product from,  
24 it was all dusty, and they found 2,4,5 or rather TCDD in the