

1 A. That's a yes.

2 Q. Thank you, Doctor. How about persistent feelings
3 of pins and needles in the body? Can that be a clinical
4 effect, Doctor?

5 A. It can be.

6 Q. How about cramps, can that be a clinical effect?

7 A. I don't know, sir.

8 Q. You don't know that cramps can be a clinical
9 effect? Have you ever gone swimming, swum too fast, too far,
10 too long, had a cramp?

11 A. I try not to, sir.

12 Q. Have you ever done it?

13 A. When I was a child, yes.

14 Q. Was the cramps that you had a clinical effect of
15 fatigue, of blood deprivation, or of some injury to your
16 muscles?

17 A. In that instance, yes, sir.

18 Q. So cramps can be a clinical effect can it not?

19 A. It's possible to be a clinical effect.

20 Q. Is that yes it can be a clinical effect?

21 A. It can be in your terms, sir.

22 Q. How about loss of power, can that be a clinical
23 effect?

24 A. I don't know what that means, sir. What is loss of

1 power?

2 Q. Loss of strength. Can loss of strength?

3 A. Is that equivalent to weakness?

4 Q. Doctor, can loss of strength be a clinical effect?

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

6 Q. You don't know what loss of strength means, Doctor?

7 A. No, not -- not the way it's --

8 Q. Are you saying you don't know what loss of strength
9 means, Doctor?

10 A. It says loss of power here.

11 Q. Doctor, I'm asking you whether or not you know what
12 loss of strength means?

13 A. I can interpret it.

14 Q. My question is, do you know what loss of strength
15 means?

16 A. At face value, I do not know.

17 Q. Doctor, do you know what loss means?

18 A. Lack of.

19 Q. Do you know what strength means?

20 A. I believe I do.

21 Q. Do you know what those two combined, loss of
22 strength means, Doctor?

23 A. That means having no strength.

24 Q. Why, Doctor?

1 A. That's what it means.

2 Q. Can loss of strength be a clinical effect?

3 A. I don't know.

4 Q. Doctor, you don't know that you can lose your

5 strength if you are sick, if you are too old, if you are worn

6 out, if you are deceased, if you are injured? Can't you have

7 a loss of strength from any number of situations, Doctor?

8 A. You can, but this says loss of power, sir.

9 Q. Doctor, are you listening to what I'm asking you?

10 A. Yes, I am.

11 Q. You keep referring to a paper. My question refers

12 to loss of strength. Can loss of strength be a clinical

13 effect, Doctor?

14 A. Complete lack of strength I've never heard of,

15 complete lack of strength.

16 Q. Doctor, I'm not asking you whether or not you've

17 ever heard of --

18 A. That's what loss is.

19 Q. Complete lack of strength? You've heard of when

20 you are dead, have you not?

21 A. That's true.

22 Q. You've heard of it when you are paralyzed, have you

23 not?

24 A. That's true.

1 Q. You've heard of it when you are laying flat on your
2 back so sick, so ill you can't move, you've heard of that
3 too, haven't you, sir?

4 A. That's true, sir.

5 Q. You've heard of that. Now, can those things be
6 clinical effects, Doctor?

7 A. If you are dead or paralyzed, yes.

8 Q. And that's the only way you can have a clinical
9 effect from loss of strength?

10 A. That's complete loss of strenght.

11 Q. I didn't say complete loss.

12 A. That's what loss means, loss means lack of.

13 Q. Loss means complete?

14 A. Doesn't it mean lack of?

15 Q. Can't you have a slight loss? Can't you have some
16 loss? Can't you have a great loss? Can you have a little
17 bitty loss? Can you have complete loss? All these things
18 are losses, aren't they?

19 A. Not necessarily, no.

20 Q. Aren't they all losses, sir?

21 A. No.

22 Q. They are not? What are they if they are not
23 losses? Is a slight loss a loss, Doctor?

24 A. If you quantitate loss.

1 MR. HEINEMAN: Excuse me. Let me object to four
2 questions in a row there.

3 THE COURT: Objection is overruled.

4 Q. (by Mr. Carr) Is a slight loss a loss?

5 A. I don't know about a slight loss, sir, never heard
6 of it.

7 Q. You don't know whether that's a loss?

8 A. Decrease but not a slight loss.

9 Q. Doctor, is a slight loss equivalent to a decrease
10 or less?

11 A. I don't know. That's your -- that's your
12 definition, sir.

13 Q. You don't know that a slight loss of strength means
14 a decrease in strength?

15 A. If that's the way you define it.

16 Q. Let's define it that way. Loss of strength means
17 -- a slight loss of strength means a decrease in strength?

18 A. If you are defining it that way.

19 Q. Defining it that --

20 A. Are you defining it that way?

21 Q. Yeah, Doctor, is that a clinical effect?

22 A. It may be.

23 Q. Can it be?

24 A. It can be in your terms.

1 Q. Can a great loss of strength be a clinical effect?

2 A. It might be.

3 Q. Can it be, Doctor?

4 A. If you are paralyzed.

5 Q. Can a great loss --

6 A. Or dead.

7 Q. Can a great loss of strength be a clinical effect,
8 Doctor?

9 A. It can be.

10 Q. Doctor, what about burning in body, can that be a
11 clinical effect?

12 A. I don't know what that is, sir, and you know -- I
13 have no idea what that is.

14 Q. Doctor, I'm asking you whether or not you can have
15 a burning sensation in your body as a clinical effect,
16 Doctor? Can it be a clinical effect?

17 A. I don't know what that is, sir.

18 Q. My wife who has recently gone through menopause
19 complains about burning, about hot flashes, about things of
20 that sort, is that a clinical effect of her going through
21 menopause?

22 A. The way you have described it, it's yes, but the
23 way it's described here, sir --

24 Q. Doctor, I'm not -- please quit referring to that,

1 Doctor.

2 A. You referred to it, not me.

3 Q. Doctor, I'm asking you whether or not a burning --
4 now these people out here, as far as you are concerned, they
5 may all be going through menopause, they may have blow
6 torches put to their body.

7 A. I hope not.

8 Q. May be over exercising, may be doing any number of
9 things to cause burning in bodies, but that's not what I'm
10 asking you, Doctor. I'm asking you simply can burning in
11 body be a clinical effect?

12 A. And what I said, sir, is I don't know what burning
13 in body is.

14 Q. Doctor, I've described it to you a number of things
15 that can be.

16 A. The way you've --

17 Q. Can those things be clinical effects?

18 A. The way you have described it?

19 Q. Yes, Doctor, can that be clinical effects?

20 A. Not the way it's described here, but the way you
21 have described it it's a clinical effect.

22 Q. Can tingling in fingers and toes be a clinical
23 effect, Doctor?

24 A. I believe so.

1 Q. Thank you, Doctor. Now, Doctor, you have also had
2 occasion to perform a health study upon various workers at
3 the Krummrich plant, have you not, sir?

4 A. I have.

5 Q. 1979?

6 A. Yes, sir.

7 Q. 1507a to the witness, please. Do you have it,
8 Doctor?

9 A. No, I do not.

10 Q. Oh, I'm sorry. I'll give you a copy of mine.

11 MR. HEINEMAN: Excuse me, Your Honor, may counsel
12 approach the bench?

13 THE COURT: Sure.

14 (The following Side Bar conversation was had outside the
15 hearing of the jury.)

16 MR. HEINEMAN: I just want to make sure we are
17 working with the same version of this thing. As I recall, it
18 was corrected two or three times.

19 MR. CARR: Yes, 1507a is the last version.

20 THE COURT: Okay.

21 MR. HEINEMAN: 1507a is what the witness has?

22 MR. CARR: Is what the witness has.

23 MR. HEINEMAN: All right.

24 THE COURT: Fine.

1 (The following proceedings were had in open court.)

2 Q. (by Mr. Carr) Doctor, when you perform this health
3 study upon these workers, you ask a number of questions
4 relative to their problems, complaints, and symptoms, did you
5 not, sir?

6 A. We asked specific questions about --

7 Q. Now, Doctor --

8 A. We asked specific questions about their complaints,
9 sir, yes.

10 Q. And one question that you asked, Doctor, is do you
11 have headaches daily, weekly, less than weekly, did you not,
12 sir?

13 A. I don't have the questionnaire before me but I
14 believe we did that.

15 Q. That's my only copy right now.

16 A. Okay.

17 Q. Doctor, you asked a number of questions, did you
18 not, sir?

19 A. Yes.

20 Q. Do you have headaches? Do you have trouble
21 sleeping? Are you tired most of the time? Do you need more
22 sleep than usual? Do you have a good appetite? Do you lose
23 your temper easily? Do you feel angry often? You've asked
24 all those questions in that questionnaire, did you not,

1 Doctor?
2 A. I believe we do.
3 Q. All right. Now, Doctor, are those problems that
4 you mentioned there, are they all clinical effects?
5 A. No, sir.
6 Q. How about headaches, is that a clinical effect?
7 A. In answering to this question, they are complaints,
8 sir.
9 Q. Well, they are complaints or symptoms, aren't they,
10 sir?
11 A. They might be if they are real.
12 Q. Doctor, a complaint according to your definition is
13 a clinical effect?
14 A. It can be a clinical effect if it's real. We have
15 been through that a thousand times.
16 Q. No question about it. I'm not talking about
17 imagined headaches or imagined trouble sleeping, neither were
18 you, you were asking about real problems, weren't you, that
19 they might have, weren't you, sir?
20 A. At any time.
21 Q. Isn't that right?
22 A. At any time.
23 Q. Doctor, is the answer to my question, yes, you were
24 asking about real problems?

1 A. At any time, yes, sir.

2 MR. CARR: Would you direct the witness to answer
3 my question.

4 THE COURT: Doctor, please don't go beyond the
5 question that's asked of you. Could you answer the question
6 directly?

7 A. We did, sir.

8 Q. And, Doctor, the question that you asked with
9 reference to headaches was do you have headaches, that's what
10 you asked, wasn't it, sir?

11 A. Yes, sir.

12 Q. Now, you are asking whether or not they have a
13 clinical effect known as headaches, weren't you, sir?

14 A. No, we are not. We are asking them if they have
15 headaches and clinical effect is the effect of something and
16 insinuates that something is causing it.

17 Q. Doctor, weren't you asking these questions to do a
18 health study on these people associated with these chemicals
19 at the Krummrich's Sauget, Illinois plant?

20 A. If it was so found, data analysis has to be done
21 first, sir.

22 MR. CARR: Would you direct the witness to wait
23 until I finish my question?

24 THE COURT: I believe he was trying to ask another

1 question after you answered the one.

2 Q. Doctor, weren't you asking these questions in order
3 to assert whether or not these men had problems related to,
4 associated with, caused by the chemicals with which they were
5 working?

6 A. Not necessarily.

7 Q. Doctor, isn't that the reason you asked these
8 questions?

9 A. No, we wanted to know what the health status of
10 these people were and that's different.

11 Q. Doctor, why did you want --

12 A. That's different.

13 Q. Doctor, why did you want to know what their health
14 status was?

15 A. We wanted to know what the health status of that
16 group was.

17 Q. Doctor, didn't you say to these workers the
18 objective of this clinical study is to determine the health
19 status of employees of the W. G. Krummrich plant of the
20 Monsanto Company who have been exposed to chlorinated phenols
21 and then go on and on, Doctor? Didn't you say that, sir?

22 A. We did, but that doesn't mean to say we were
23 looking for things that had to be related to chlorinated
24 phenols.

1 Q. Oh, Doctor.

2 A. A health status --

3 Q. But then, Doctor, you went on to say -- I didn't
4 read you the entire sentence.

5 A. Please do.

6 Q. And to identify those conditions which may be
7 related to the work environment, you said that also, didn't
8 you, Doctor?

9 A. Correct, sir.

10 Q. You also said particular attention will be paid to
11 skin reactions and the problem of other organ systems which
12 may be identified through laboratory tests?

13 A. Correct, sir.

14 Q. You said that, didn't you, Doctor?

15 A. Through laboratory tests.

16 Q. And you asked these questions having in mind you
17 wanted to determine the health status of these employees,
18 didn't you, sir?

19 A. Correct. That's what I have already said, sir.

20 Q. All right. Doctor, now, you asked these questions
21 in order to help you determine that health status, did you
22 not, sir?

23 A. Absolutely.

24 Q. All right. Now, Doctor, you asked the question

1 about whether or not headaches, because you believe that was
2 -- you designed this study, that was a question that was
3 important to you to ask in order to determine their health
4 status, did you not, sir?

5 A. One of the things we'd ask, among a lot of others.

6 Q. That's right, Doctor, no question about that, and
7 so you wanted to find out whether or not their health had
8 been affected by these chemicals in such a way as could
9 possibly cause them headaches, did you not, sir?

10 A. No.

11 Q. Doctor --

12 A. Not necessarily.

13 Q. Not necessarily. Hadn't you previously found that
14 human health effects of exposure to TCDD was headaches?
15 Hadn't you previously found that, Doctor?

16 A. No, sir.

17 Q. Didn't you testify here earlier that a health
18 effect -- and doesn't your Table 1 show a health effect from
19 TCDD exposure in this instance acute reaction is headache?

20 A. We have went through that before, sir, and I
21 pointed out --

22 Q. Doctor, would you answer that?

23 A. That is a runaway reaction.

24 Q. Would you answer that?

1 A. No, I did not, sir.

2 Q. You didn't find this to be a human health effect
3 from this acute reaction to TCDD?

4 A. No, to TCP, there it --

5 Q. Doctor --

6 A. Why don't you read the rest of it? It says acute
7 following TCP runaway reactions as at Seveso.

8 Q. Doctor, what about TCDD?

9 A. The acute health effects --

10 THE COURT: Doctor, you've answered the question.
11 You've gone beyond the question. Let counsel ask the next
12 question?

13 A. Thank you.

14 Q. Doctor, did you use the words TCDD here or not?

15 A. I used that to show --

16 Q. Doctor, my question is simple, did you use the
17 words TCDD there or not?

18 A. I used those words, but I have explained it before
19 in this court, sir, and you have manipulated my answer.

20 THE COURT: Doctor --

21 MR. CARR: Your Honor, would you --

22 THE COURT: That was not at all responsive to
23 anything that you were asked. You were asked simply whether
24 the words were used. Now, when you answer a direct question

1 like that stop when you fully answered it. What you said
2 past that point was not responsive to the question. I
3 pointed that out to you dozens of times and you shake your
4 head in acknowledgment that that's so, and then you do it
5 again a short time later. This time please --

6 A. I'll try not to, sir.

7 THE COURT: Please follow the requests of the Court
8 and only respond to the questions that are asked of you.

9 MR. CARR: Would you direct the jury to disregard
10 the charge that Dr. Suskind has made that I've manipulated --

11 THE COURT: Jury is so instructed. It was not
12 responsive to the question.

13 Q. (by Mr. Carr) Dr. Suskind, you use the questions,
14 did you not, sir, you designed the questionnaire in order to
15 determine their health status?

16 A. We did, sir.

17 Q. And, Doctor, one of the questions you asked was
18 about headaches, wasn't it, sir?

19 A. We did, sir.

20 Q. You wanted to find out whether or not it was
21 possible these men had headaches that just might possibly be
22 caused by the conditions in which they were working, did you
23 not, sir?

24 A. It might be, sir, yes.

1 THE COURT: Doctor -- I mean -- now I'm getting
2 confused.

3 MR. CARR: Yes, Your Honor.

4 THE COURT: Let's take a break at this point in
5 time. I think I need it if no one else does.

6 THE COURT: We will take a short recess, whether
7 doctors, lawyers, or jurors. And I would remind you, you are
8 not to discuss this matter among yourselves, with anyone
9 outside the jury panel or as of yet form any opinions or
10 conclusions about the matters on trial. Court is in recess.
11 (Following a recess, these proceedings were had in open
12 court.)

13 Q. Doctor, these questions that are contained on Page
14 11 of your document dealing with these Krummrich plant
15 workers, these questions are the only questions contained in
16 the questionnaire that you gave to these men relating to
17 their current health problems symptoms or complaints, isn't
18 that correct, sir?

19 A. No, I believe we do have a -- no, we have on Page 9
20 a personal medical history, have you been bothered with the
21 following conditions --

22 Q. Doctor, that's says have you been bothered with any
23 of the following conditions?

24 A. Right, well, that's a medical history, sir. You

1 asked me that and I'm answering it. There were any number of
2 other places, sir, and in the physicians --

3 Q. Doctor, that physician is when they asked them
4 orally, when the dermatologists that you brought with you or
5 the interviewers you brought with you, they ask questions.
6 My question relates to questionnaire, the questions written
7 --

8 A. I am saying that on Page 9, sir.

9 Q. All right. Doctor, I understand that there is on
10 Page 9 personal medical history, have you been bothered with
11 any of the following conditions?

12 A. Correct, sir.

13 Q. That would relate to at any time in the past,
14 wouldn't it, sir, because it says have you been bothered,
15 that's in the past tense, isn't it, sir?

16 A. Right, in the past.

17 Q. Now, that's past tense, isn't it, sir?

18 A. Yes, sir.

19 Q. Now, my question relates to current, Doctor, the
20 current questions in this form that you submitted to these
21 men, those current questions dealing with their current
22 health problems contained on those questions on Page 11
23 running from question 3 to 9, isn't that correct, sir?

24 A. And on Page 13 and 14, sir, in the review of

1 symptoms.

2 Q. Doctor, the review of symptoms is something for the
3 doctor to fill out. It's the dermatologists that you brought
4 down, they reviewed the systems with the men individually, in
5 the examining room, Doctor. I'm not referring to that
6 examination. My question is referring to the questionnaire
7 submitted to the men for answering. Is it not true that the
8 only questions asked about their current medical problems,
9 current health problems is contained on Page 11?

10 A. No, sir.

11 Q. What other page, sir?

12 A. On Page 13 and 14 the doctor --

13 Q. Doctor --

14 A. My I finish my answer, sir?

15 Q. Doctor --

16 A. You have asked me a question.

17 MR. CARR: Would you direct the witness --

18 THE COURT: Doctor, please --

19 Q. (by Mr. Carr) Doctor, we have already referred to
20 Page 13 and 14. It is the doctor asking the questions.

21 A. Well, the doctor asks the questions.

22 Q. Yes, Doctor, I'm not asking --

23 A. A medical history is taken by a doctor.

24 THE COURT: Doctor, Doctor, Doctor, let him finish.

1 the question please. We have gone -- this is the third time
2 we have gone over this.

3 Q. (by Mr. Carr) Doctor, I'm not asking you whether
4 or not the doctor in the examining room asked questions about
5 their current medical problems, that is not the question I'm
6 asking you. You understand that, Doctor?

7 A. I believe I do, sir.

8 Q. Doctor, I'm asking you about the questionnaire that
9 was submitted dealing with --

10 A. It wasn't submitted. It was an interview, sir.

11 Q. In the interview --

12 A. Okay.

13 Q. By the interviewer --

14 A. This was an administered interview.

15 Q. By the administered interviewer, those questions
16 are contained on Page 11, are they not, sir?

17 A. The administered interview on Page 11 and the
18 doctors interview, sir, on Page 13 and 14.

19 MR. CARR: Your Honor, would you direct the
20 witness? He is again going beyond the question.

21 THE COURT: Doctor, I just explained a minute ago
22 that's not responsive to the question. This is the fourth
23 time we have had to go over it. I'm ordering the jury to
24 disregard the last remarks about Page 13 and 14. They were

1 not responsive. The other stands as the answer. Mr. Carr,
2 let's proceed.

3 Q. (by Mr. Carr) Dr. Suskind, Page 13 and 14 do not
4 set out any questions, do they, sir? It simply is a form for
5 the physician to fill out as he reviews and examines the
6 patient. He will question the patient. He will examine the
7 patient. He will fill out that form. But there are no
8 questions asked, set out on that form to be asked the
9 patient, are there, sir?

10 A. Doctors don't need questions, sir.

11 MR. CARR: Your Honor, would you direct the witness
12 to answer the question?

13 THE COURT: Doctor --

14 A. There are no specific questions.

15 Q. Doctor, there are no questions at all set out on
16 that page?

17 A. There are, sir.

18 Q. The doctor uses --

19 A. There are questions about organ systems.

20 Q. May I finish, sir? The doctor uses his own
21 background, his own knowledge, his own method of asking
22 questions. He's not confined to a particular question or
23 form, is he, sir?

24 A. He is not confined to a form, sir.

1 Q. And there are no questions on 13 and 14 that he is
2 told specifically to ask the worker. He is given his own
3 discretion as to how to ask the questions in order to pry
4 from the man his status, isn't that correct, sir?

5 A. No, sir.

6 Q. That isn't correct?

7 A. No, sir.

8 Q. Doctor, what is incorrect?

9 A. The incorrect part of that is that all of our
10 examining physicians were trained for this particular study
11 and they were instructed as to how to go about getting a
12 medical and other history from the patient.

13 Q. Doctor, it would be fine to accept that, I have no
14 quarrel with that, you understand? My question isn't
15 directed to that, sir. My question relates to the questions
16 in the questionnaire that your interviewer, not your doctor,
17 but that your interviewer was to ask the workers. Those
18 questions dealing with the current medical health problems
19 are contained on Page 11, are they not, sir?

20 A. 9 and 11, sir.

21 Q. Doctor, we have already established that 9 deals
22 with past medical history.

23 A. No, it could be current as well, it could be any
24 time.

1 Q. Doctor, didn't you --

2 A. Any time.

3 Q. Doctor, excuse me, but didn't you agree that the
4 question was have you been bothered?

5 A. Right.

6 Q. That is in the past tense, isn't it, sir?

7 A. And have you been bothered yesterday, the day
8 before, today, it's the same thing. Have been. This is a
9 semantic problem which you have raised, sir, and I submit
10 that these problems could have been yesterday or the day
11 before.

12 Q. Doctor, I don't even quarrel with that, Doctor.

13 A. Well, then why are you quarreling?

14 Q. I am not, Doctor, you are. The question that I'm
15 asking you, sir, the only questions that are set out in this
16 questionnaire about current medical problems in the present
17 tense, sir, do you have headaches, do you have trouble
18 sleeping, are you tired most of the time, do you need more
19 sleep than usual, these are all based in the present tense,
20 aren't they, sir?

21 A. As well as Page 9, sir.

22 Q. Doctor, the Page 9 uses the word have you been?

23 A. So what?

24 MR. CARR: Your Honor, would you --

1 A. It could be yesterday.

2 THE COURT: Doctor, that's not responsive to the
3 question. Please confine yourself to the question that was
4 asked of you. We have been on this too long.

5 Q. (by Mr. Carr) Doctor, these questions that were
6 asked were designed -- on Page 11, were designed to help you,
7 along with these questions dealing with the history on Page
8 9, were designed to give you a basis in order to make a
9 determination of the health status of these workers, isn't
10 that correct, sir.

11 Q. Not only those things, Doctor, but other things as
12 well. But these questions were part of the design for that
13 end, weren't they, sir?

14 A. They were partly designed for that end, sir, yes.

15 Q. Now, Doctor, and these questions that you asked
16 were designed, among other things, to find out whether or not
17 they had these particular clinical effects, were they not,
18 sir?

19 A. No, sir.

20 Q. Did you ask the questions for a purpose, Doctor?

21 A. Yes, sir.

22 Q. Did you ask the questions to determine whether or
23 not they had these particular problems currently, that's
24 contained on Page 11?

1 A. We did.

2 Q. And did you ask those questions with the thought in
3 mind that possibly one or more of these problems could be
4 caused by exposure to chemicals?

5 A. Possibly.

6 Q. Yes, Doctor, that's the reason for asking the
7 questions, is it --

8 A. No, sir.

9 Q. Doctor, didn't you ask the questions for the
10 purpose -- didn't you do the whole survey for the purpose of
11 trying to find out what their health status is as connected
12 to the work environment, as related to the work environment?
13 Haven't we already established that you said that was your
14 objective in this whole study?

15 A. It was one of our objectives, yes.

16 Q. Doctor, it was the objective. It was the stated
17 objective, was it not, sir? Stated by you?

18 A. To determine the health status.

19 Q. Wasn't it the objective to determine the health
20 status of these employees who have been exposed to
21 chlorinated phenols, and to identify those conditions which
22 may be related to the work environment?

23 A. That's correct, sir.

24 Q. And, Doctor, you asked these questions for the

1 purpose of identifying, among other things -- you asked these
2 questions, among other things, for the purpose of identifying
3 those conditions which may be related to the work and
4 environment, did you not, sir?

5 A. We did, sir.

6 Q. Thank you, Doctor. Now, and you wanted to find out
7 whether or not these people had these problems, and if they
8 had them, you wanted to find out whether or not it might be
9 -- may be related to chlorinated phenols, isn't that correct,
10 sir?

11 A. That was one of our objectives, sir.

12 Q. That was the objective, wasn't it?

13 A. Not necessarily so.

14 Q. Doctor, wasn't that the only stated objective of
15 this study, sir?

16 A. No, it wasn't.

17 Q. What other objective did you state there, sir, in
18 your document --

19 A. We said --

20 Q. Doctor --

21 A. You have read it correctly, sir.

22 Q. My question --

23 A. You have read it correctly.

24 Q. I know that, Doctor. My question now is what other

1 objective is set out in this document other than the
2 objective I read to you, sir?

3 A. If we are determining --

4 MR. CARR: Would you direct the witness to answer
5 my question?

6 A. I'm answering your question. You haven't allowed
7 me to.

8 THE COURT: Doctor, please answer the question
9 directly?

10 A. I am, sir. The objective stated there is to
11 determine the health status of individuals, and the group,
12 and to determine because these people were indeed exposed to
13 chlorinated phenols, but there could be other reasons for
14 having symptoms or other reasons for having abnormal
15 laboratory findings.

16 Q. Nobody is quarreling with that, Doctor. We both
17 agree 100 percent.

18 A. Then we agree.

19 Q. But, Doctor, my question to you, sir, is what
20 objective did you have in this study other than to determine
21 their status of those who have been exposed to chlorinated
22 phenols and to identify those conditions which may be related
23 to that exposure, sir?

24 A. That plus whatever else I said.

1 Q. Whatever else did you say, Doctor?

2 A. I said what other -- other stimuli, other
3 environments, other causes for clinical or laboratory
4 findings.

5 Q. Where did you say that, Doctor, that you want to
6 find out what other causes may be?

7 A. We said health status.

8 Q. Excuse me, Doctor, my question is where do you say
9 you want to find out whether or not the health status has
10 been caused by something other than the exposure to the
11 chlorinated phenols?

12 A. Sir, when you do a study like that it's implied.

13 MR. CARR: Your Honor -- Dr. Suskind, would you
14 point out to me where?

15 A. I said it's implied.

16 Q. What does that mean, that it's not stated in there?

17 A. It's not stated specifically.

18 Q. What does that mean that it's not stated in there?

19 A. Any self respecting scientist would would recognize

20 --

21 Q. Would you answer my question?

22 THE COURT: Doctor that was not responsive. Please.
23 answer the question that was asked you.

24 A. It isn't spelled out there if that's what you want.

1 Q. Doctor, the objective that's spelled out is you
2 want to determine whether or not these conditions that they
3 have were caused by exposure to the chlorinated phenols?

4 A. Or something else.

5 Q. Well, that's all right, Doctor, I'll certainly go
6 with that.

7 A. That's all I'm-saying, sir.

8 Q. Now, Doctor, the questions that you asked and that
9 we have already read once were asked for the purpose of
10 helping you identify those conditions that might be
11 attributed to exposure to chlorinated phenols, isn't that
12 correct, sir?

13 A. Or something else, sir.

14 Q. Or something else?

15 A. Good. Yes.

16 Q. All right. And you asked those questions with that
17 in mind, did you not, sir?

18 A. Correct.

19 Q. And these are the only questions that you've asked
20 on that page in this interviewer section, isn't that correct,
21 sir?

22 A. In the interviewer section.

23 Q. All right, Doctor. Now, Doctor, these questions
24 that you asked were for the purpose of determining clinical

1 effects for exposure to the chlorinated phenols or from
2 something else, isn't that right, sir?

3 A. No.

4 Q. What other purpose would you have in asking these
5 questions, Doctor?

6 A. Were those --

7 MR. CARR: Excuse me, let me finish my question.
8 What other purpose would you have in mind in asking those
9 questions if you did not want to determine what their current
10 health status may have been that was caused by the exposure
11 to the chlorinated phenols or something else?

12 A. Okay. It was important for us to find out if these
13 complaints as indicated on Page 11, which you are referring
14 to, were significant, if they were significant complaints, if
15 they were real. And it has nothing to do with lying or not
16 lying. It has to do with the significance of those answers.

17 Q. Now, Doctor, would you answer my question, please,
18 sir?

19 A. I have already.

20 Q. Would you read the question.

21 COURT REPORTER: "Now, Doctor, these questions that
22 you asked were for the purpose of determining clinical
23 effects for exposure to the chlorinated phenols or from
24 something else, isn't that right, sir?"

1 MR. HEINEMAN: Objection, just been answered,
2 Judge.

3 THE COURT: I think it has been. Objection
4 sustained.

5 Q. (by Mr. Carr) Are you saying the purpose to answer
6 these questions is to find out if they had significant health
7 problems?

8 A. One of the purposes, sure.

9 Q. You asked the question, these nine questions in
10 order to find out whether or not they had significant health
11 problems that may have been caused by chlorinated phenols,
12 isn't that correct, sir?

13 A. When you -- I say the significance of these, not
14 significant problems, but the significance of these
15 problems. They are just a few, a few possible complaints, as
16 you can see, and I believe that we -- again we depended upon
17 the physician to ask the rest.

18 Q. Doctor, that isn't what I'm asking you about at
19 all. Would you read my question to him again.

20 COURT REPORTER: "You asked the question, these nine
21 questions in order to find out whether or not they had
22 significant health problems that may have been caused by
23 chlorinated phenols, isn't that correct?

24 A. No. The answer is no.

1 Q. Sir?

2 A. No.

3 Q. You just -- why did you ask these questions then,
4 Doctor?

5 A. Because we wanted to know if there were -- if they
6 were significantly related.

7 Q. Yes.

8 A. Significantly. First of all, if these were
9 significant issues.

10 Q. Yes. Significant complaints?

11 A. Right. And whether or not one could by looking at
12 groups of people relate these complaints, these complaints to
13 the exposure, or to some other factors that might be, might
14 emerge.

15 Q. That's fine, Doctor, I have no quarrel with that.
16 Accept that 100 percent. That's the reason for asking these
17 questions, isn't it, sir?

18 A. But we didn't only ask them to find out if it was
19 chlorinated phenols, sir.

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

22 A. I have.

23 THE COURT: Doctor, no, I don't think that was
24 responsive. Please read the question to him again.

1 COURT REPORTER: "That's fine, Doctor, I have no
2 quarrel with that. Accept that 100 percent. That's the
3 reason for asking these questions, isn't it sir?"

4 A. Does that limit it to chlorinated phenol? I'm not
5 altogether sure what the previous statement that you made in
6 the question.

7 Q. It's the answer that you made that I'm referring
8 to, Doctor. Would you read his answer to him?

9 COURT REPORTER: " Right. And whether or not one
10 could by looking at groups of people relate these complaints,
11 these complaints to the exposure, or to some other factors
12 that might be, might emerge?

13 A. Right.

14 Q. And now, Doctor, these questions fall within, and
15 Doctor, there is no question but what these are questions
16 designed to determine whether or not there are clinical
17 effects from this exposure or from something else, isn't that
18 correct, sir? We have covered that, no problems with that,
19 sir.

20 A. Yes, I believe so.

21 Q. All right. Now, Doctor, these questions fall into
22 categories dealing with headaches, and by these questions I
23 mean those on Page 11, sir, deal with headaches, and their
24 frequency, whether or not they have difficulty sleeping,

1 fatigue, poor appetite and neurobehavioral problems, correct,
2 sir?

3 A. By neurobehavioral I assume you are referring to
4 the --

5 Q. The temper and the anger?

6 A. Lose your temper and the anger, yes.

7 Q. All right. Doctor, now, and these gentlemen all
8 answered these questions, did they not, sir?

9 A. I don't have the records before me, but they were
10 asked the questions and I assume that in those 115 who were
11 interviewed that they answered the interviewers questions.

12 Q. And you collected with all their answers are you
13 not, Doctor?

14 A. We have all the records.

15 Q. You have all the records that has all their
16 answers, don't you, sir?

17 A. Yes, I believe we do.

18 Q. These were the sole questions asked on this page by
19 the interviewer that were set up purposely designed to, along
20 with the other questions, and the past history and the
21 doctor's examination, designed to get from them what their
22 current health problems might be, isn't that correct, sir?

23 A. Yes.

24 Q. And this is --

1 A. Current complaints were.

2 Q. Yes, this is information that you felt was
3 important to get, did you not?

4 A. Otherwise we wouldn't have asked.

5 Q. That's right, that follows, doesn't it, sir?

6 A. Right.

7 Q. These were the most important questions that you
8 could design to ask, have your interviewer ask preparatory to
9 the physicians seeing him about their current health problems
10 that might be bothering these workers who have been exposed
11 to these chlorinated phenols, isn't that correct, sir?

12 A. This along with 9 and the physicians.

13 Q. Is that correct, sir?

14 A. Page 11, as I say, only constitutes a small number
15 of those questions.

16 Q. Doctor, but it's the only questions based upon the
17 current status in this interviewer section, is it not, sir?
18 Have we established that, sir? It's the only ones posed in
19 the present tense, do you have headaches; do you have trouble
20 sleeping; are you tired most of the time; do you need more
21 sleep than usual; do you have a good appetite; do you lose
22 your temper easily; do you feel angry often; those are the
23 only questions posed only in the present tense in this form?

24 A. No, sir. No, sir.

1 Q. Doctor, haven't we established that those are the
2 only ones?

3 A. No, sir, we have not established that, sir.

4 Q. You pointed out Page 9, sir?

5 A. Right, I did.

6 Q. That the interviewer was to ask about problems that
7 have been bothering them, correct, sir?

8 A. Right.

9 Q. All right. Now, Doctor, did you utilize the
10 answers to these questions, sir, on Page 11, or on Page 9 in
11 analyzing whether or not what the health status of these
12 people were? Did you, sir?

13 A. I don't know if they are in our current analyses.
14 I think what we concentrated on --

15 Q. Excuse me, Doctor, did you utilize these answers or
16 any part of these answers or the business on Page 9 in any
17 way in reporting on the health status of these workers? Do
18 you have your report, your final report submitted on
19 September 29th, 198 -- Do you, Doctor? If you don't I'll
20 have the Clerk give you the copy.

21 A. That, sir, was not the final report, sir.

22 Q. There is another more final report than that?

23 A. You have copies. We made available to you copies.

24 Q. Excuse me, is there another report more final than

1 this?

2 A. Well, it is not completely --

3 Q. Doctor, my question is --

4 A. Completely assembled --

5 Q. My question is, is there another report more final
6 than this one?

7 A. Yes, sir.

8 Q. Where is that report, sir?

9 A. You have copies of it, sir, I believe, and --

10 Q. Are you talking about those documents that were
11 given to us when you started testifying?

12 A. Well, before we testified, yeah, I am, sir.

13 Q. Doctor, those are documents that you just brought
14 in to this court. You never submitted those to anybody
15 before you came to this court, did you, sir?

16 A. No, we submitted them to Monsanto, sir.

17 Q. When was that, sir?

18 A. Shortly before we came here, sir.

19 Q. Doctor, what you gave me -- what was given me was a
20 file of papers with some tables and other things in it, isn't
21 that what you gave me, sir?

22 A. Very valuable stuff, sir, yes.

23 Q. Isn't that what you gave me, sir?

24 A. Yes, we did. Not a pile of papers. That was a

1 report.

2 Q. That is something that you gave Monsanto in
3 response apparently to some question they asked you for some
4 other kind of report?

5 A. No, sir. We felt that the 19 -- whatever that
6 other report was, 1982.

7 Q. 1980, Doctor.

8 A. Was really not the final report because we hadn't
9 -- by that time we had not analyzed all the data. We only
10 analyzed some of the data.

11 Q. This report in 1979, a study in 1979, and as late
12 as 1986, you had not analyzed all the data?

13 A. That's correct, sir, absolutely.

14 Q. Doctor, I suggest to you that your report, your
15 final report was made after we submitted your final report
16 into evidence in this case, in the fall of 1985, and after
17 Plaintiff's Exhibit 1500 was made, which in fact analyzed
18 your final report, isn't that correct, sir?

19 A. No, I would submit that you -- that what you say is
20 completely erroneous, sir.

21 Q. Doctor, did your report come up in 1986? Did your
22 final final report come up in 1986? Did you submit it in
23 1986, Doctor?

24 A. Yes, in 1986.

1 Q. Was 1986 in point of time months after we prepared
2 Plaintiff's Exhibit 1507a?

3 A. Sir, I never saw that until this trial started,
4 sir.

5 Q. This trial started two years ago.

6 A. Until I got -- sorry. Until I was asked to
7 testify.

8 Q. Well, Doctor, you were asked to testify several
9 months ago, years ago, as a matter of fact.

10 A. No, I was not, sir. That's not so.

11 Q. When were you asked to testify, Doctor?

12 A. Oh, some time in either November or December of
13 last year, sir.

14 Q. And, Doctor, that was after Plaintiff's Exhibit
15 1507a came into existence?

16 A. I haven't seen that.

17 Q. I'm not asking whether or not you've seen it or
18 not. Monsanto knew of its existence. Monsanto knew it. You
19 were asked to testify after this exhibits was prepared, were
20 you not, sir?

21 A. I don't know, I can't answer that.

22 Q. This exhibit bears the date of July 31st, 1985, you
23 would have been asked after that date, wouldn't you, sir?

24 A. No, we were -- you mean asked to testify?

1 Q. After this point in time, after July 31st, 1985,
2 you were asked by Monsanto to testify in this case, is that
3 correct, sir?

4 A. I believe so, yeah.

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

7 MR. CARR: Yes, Your Honor.

8 THE COURT: We will recess for lunch at this time.
9 We will start again at 1:15. Admonishments that I've given
10 you earlier will apply during this break. Court is in lunch
11 recess.

12 (Following a recess for the lunch hour, these proceedings
13 were had in open court.)

14 Q. (by Mr. Carr) Dr. Suskind, this morning we were
15 discussing the report, Plaintiff's Exhibit 1500 entitled, A
16 Study of Health Workers Involved in the Production of
17 Pentachlorophenol and Other Chlorinated Phenols, you recall
18 that, sir?

19 A. Yes, I do, sir.

20 Q. And you have in the past called this your final
21 report, have you not?

22 A. No, sir, I have not.

23 Q. You have not?

24 A. No.

1 Q. You didn't tell Dr. Roush that it was your final
2 report?

3 A. No, not specifically, sir, no.

4 Q. Dr. Roush testified in this court on the 25th of
5 July, 1985 on Page 47, counsel, "Question: Dr. Roush --"

6 MR. HEINEMAN: Can you wait just a second until we
7 find it?

8 MR. CARR: Certainly.

9 MR. NASSIF: What page, Mr. Carr?

10 MR. CARR: 47, Line 10.

11 Q. "Dr. Roush, when you testified here before the
12 break and before your visit with Suskind, you called this
13 Krummrich study the final report, did you not, sir?" And his
14 answer was, "I called it a final report after Dr. Suskind
15 said to call it the final report." And then on Page 48,
16 "Question: And at that time before you had those other
17 things take place, you considered it the final report, did
18 you not, sir? Answer: I called it the final report.
19 Question: Well, you called it what you considered it to be,
20 did you not, sir? Answer: At Dr. Suskind's request."
21 Now, Dr. Suskind, was Dr. Roush telling the truth when he
22 said that you told him to call it the final report?

23 A. No, I don't think he was completely accurate, sir.

24 Q. My question is was he telling the truth?

1 A. I say I don't think he's completely accurate.

2 Q. Doctor, there is no -- you can't misinterpret
3 this. He says, "I called it a final report after Dr. Suskind
4 said to call it the final report." Now, he testified under
5 oath in this case that you told him to call it the final
6 report. Was he telling the truth, sir?

7 A. Not accurately, sir.

8 Q. He wasn't telling the truth accurately?

9 A. Well, there is an explanation for --

10 Q. Was he telling the truth, Doctor? Did you tell him
11 to call it the final report?

12 A. No, I did not.

13 Q. All right. And Dr. Roush either misconceived what
14 you said, or he lied, one of the two?

15 A. No, there is a third explanation, sir.

16 Q. Doctor, is there something other than he
17 misconceived what you said or that he -- because he said that
18 you said to call it a final report. Now something you said
19 to him gave him the impression that he was to call it the
20 final report according to you, and that's what he said. Now,
21 either he made that up, or you told him something that he
22 interpreted to mean called this the final report, isn't that
23 correct, sir? Aren't those the only two alternatives we
24 have, sir?

1 A. He and I discussed it and I told him something.

2 Q. My question is, sir, aren't those the only two
3 alternatives we have, either he misinterpreted what you said
4 to him, or he's not telling the truth?

5 A. No, that's not so, sir.

6 Q. What other alternative do we have, Doctor?

7 A. May I explain?

8 Q. I'm asking you what other alternative do we have?

9 A. The other alternative is the fact that there was an
10 \$8500 debt for this study which the -- which the University
11 of Cincinnati carried, and that \$8500 debt could not be paid
12 until a final report was submitted. So, since I was retiring
13 from my directorship, I felt that it would be inappropriate
14 for me to leave a debt, so I called Dr. Roush, and my
15 business office did as well, and we asked him that to have
16 the business office of the company submit the balance and he
17 said, well, we -- since this was for a final report I have to
18 say something which will allow the company to pay the
19 balance, and I said you do whatever you want to do so we can
20 get paid. If you want to call it the final report, call it
21 the final report, but it really wasn't the final report,
22 because the final report or segments of the final report are
23 in your hands, sir.

24 Q. Doctor, then what you told him was that if you want

1 to call it the final report, call it the final report?

2 A. That's what I said, sir.

3 Q. Then you in fact did tell him to call it the final
4 report, didn't you, sir?

5 A. Only for --

6 Q. I don't care about only, you in fact did tell him
7 for the purpose of getting this money from Monsanto, which
8 you are not entitled to --

9 A. Yes, we were.

10 Q. Until you get a final report, isn't that correct,
11 sir? Your group was not entitled to payment until Monsanto
12 got the final report?

13 A. That was in the original agreement, however --

14 Q. Isn't that correct?

15 A. Let me finish, Mr. Carr.

16 Q. No, I want you to answer the question.

17 A. I am answering your question, sir.

18 Q. Isn't that correct, sir?

19 A. I don't know what you mean by is that correct, sir.

20 Q. That --

21 A. And please don't interrupt my answers.

22 Q. That you are not entitled to be paid until you
23 submitted to Monsanto the final report?

24 A. No, that is not so.

1 Q. All right. Was that what the documents required of
2 you, Dr. Suskind?

3 A. That is what the original -- that is what the
4 original contract read, sir.

5 Q. Was there any other modified contract, sir?

6 A. We --

7 Q. Was there a modified contract, sir?

8 A. There was a verbal agreement by Dr. Roush and
9 myself that we should get paid before I retire, sir.

10 Q. Did you have the authority of the University of
11 Cincinnati to modify this contract?

12 A. Sure, it was an agreement between the department.

13 Q. Then why did you have to call it a final report,
14 Doctor, if you had an agreement to modify it? Why didn't you
15 just say we are modifying the agreement and we are entitled
16 to be paid on this preliminary report? Why did you go
17 through the charade of calling something that's not a final
18 report a final report if you had the power to modify the
19 contract?

20 A. If you'll let me answer it, I will, sir, but don't
21 interrupt me, please.

22 Q. Dr. Suskind, do you really believe that you are
23 entitled to tell me that?

24 A. I do indeed.

1 Q. Do you really?

2 A. Because you've been interrupting me continuously.

3 Q. Doctor, do you understand what I've been
4 interrupting you the Court has allowed it and the Court has
5 said it's proper because you've been answering -- you have
6 not been obeying the orders of Court? Do you understand
7 that? Do you understand that, Doctor?

8 A. Would you allow me to answer the question?

9 Q. Do you understand what I just said?

10 A. I do understand.

11 Q. Do you understand that I'm allowed to interrupt you
12 according to the orders of this Court and other Courts and
13 the rules of this trial, that I'm allowed to interrupt you
14 when you are not answering the questions that I posed? Do
15 you understand that?

16 MR. HEINEMAN: Objection.

17 A. Even if it's impolite?

18 Q. We have got nothing to do with being polite.

19 MR. HEINEMAN: Objection.

20 THE COURT: Mr. Carr, can you approach the bench,
21 please?

22 (The following Side Bar conversation was had outside the
23 hearing of the jury.)

24 MR. HEINEMAN: This is outrageous. You won't let

1 me say anything in front of this jury and you let him carry
2 on in the most outrageous way.

3 THE COURT: There is nothing outrageous about it.
4 What he says is absolutely correct.

5 MR. HEINEMAN: I have --

6 THE COURT: Just calm down, first of all, number
7 one. Number two, what he said was absolutely correct and
8 absolutely accurate. He has been allowed to interrupt this
9 witness when I've determined that it's been a non-responsive
10 answer. Those times when I have determined that it was part
11 of a responsive answer, I have allowed the witness to
12 continue his answer. I've done that with other witnesses as
13 well as with this one. I have explained it in front of the
14 jury to this witness before, and both the statement that Mr.
15 Carr made and the question that he asked of him were proper.

16 MR. HEINEMAN: Your Honor, it is not his province
17 to instruct this witness about the Court's rules, or the
18 Court's rulings. He is not permitted to do it, under
19 Illinois law he is not permitted to do that.

20 THE COURT: Now we are rehashing objections. I can
21 use the services of both of you gentlemen as Officers of the
22 Court to enforce this Court's rules. I have used yours in
23 explaining to witnesses the rules they are to adhere to in
24 their testimony. I have used Mr. Carr's, allowed him to make

1 these statements in furtherance of enforcement of the rules
2 of this Court as to how witnesses are to testify. And I will
3 continue to use the services of both of you Officers of the
4 Court as I see fit, and in the exercise of my discretion, and
5 to see that the rules that govern this trial are obeyed by
6 all witnesses and all parties involved in the trial. You can
7 object to it however much you want, that happens to be
8 something that I am allowed to do and is something that in
9 the fulfillment of the obligations of my office I should be
10 doing if it's needed to be done to make sure that the rules
11 that I was sworn to obey are in fact enforced. Your
12 objection is overruled.

13 MR. HEINEMAN: Your Honor, do you conceive it to
14 truly be fair to not permit me to say anything in front of
15 the jury, when I disagree with this outrageous behavior that
16 Mr. Carr --

17 THE COURT: Since Mr. Carr has made objections up
18 here also it is evenhanded and fair treatment of both of
19 you. There were too many problems when both of you fought
20 out these motions in front of the jury -- objections rather,
21 in front of the jury. You are both restrained from doing
22 that and are forced to fight out the objections up here at
23 the bench. It applies to both of you. It is fair and
24 evenhanded treatment. The trial is run better as far as

1 those objections are concerned, since I have applied this
2 rule, I am therefore going to continue to apply it, and I
3 think that it's something that I intend to use in some other
4 cases in the future. Since it's applied to all parties in
5 the case, there is no question that it's fair. Your
6 objection is overruled.

7 MR. CARR: I'd like to also point out for the
8 record, Mr. Heineman, if I may respond to one of his
9 comments, when we are in front of the witness who consistent
10 -- had consistently deliberately flaunted the orders of this
11 Court and makes outrageous statements as he makes and has
12 just made, when he does not obey the orders of the Court, and
13 he makes no pretense to obey the order of the Court,
14 deliberately openly flaunting the orders of the Court, the
15 only possible way that I can control this witness, anybody
16 can control this witness is to not allow him to make these
17 long, rambling, non-responsive answers. Otherwise, if I were
18 not allowed to interrupt him, he would get before this jury
19 every conceivable improper response, every bit of improper
20 evidence that could possibly be. It would be different if
21 this witness were controllable, but this Court cannot control
22 the witness. The only way -- the only way that I can operate
23 with this kind of witness is to in fact interrupt him when
24 he's making these non-responsive answers, because the only

1 alternative the court has is to put the witness in jail and
2 force him to answer in jail these questions in an appropriate
3 fashion, and the only possible way that I can protect the
4 record in this case and prevent this witness from going way
5 beyond the question and making these outrageous charges,
6 charges me with manipulating the evidence, charging, say
7 don't interrupt me, he is not in control -- well, he is,
8 because the only way we can operate to finish this witness --
9 the Court obviously is not going to put him in jail, although
10 he should be. The only way I can operate is that I do
11 interrupt this kind of barbaric behavior.

12 MR. HEINEMAN: Well, Mr. Carr, what you confuse and
13 what I'm objecting to is the way you select to do it. First
14 of all, instead of following this Court's order and if you
15 have an objection to what this man is doing, then object and
16 come up to the bench and make your objection to this Judge
17 and let the Judge instruct him, but no, you stand out here
18 and you make a speech in front of the jury with respect to
19 what you think his behavior is, and the Court is permitting
20 that, and that's what I'm objecting to. If he wants to
21 interrupt this witness' testimony, then he can say objection
22 and come up to the bench. That's what you make me do.

23 MR. CARR: Counsel, that's impossible. The witness
24 gets it out even beyond me talking, he goes on and on. Once

1 he makes the charge, it's too late, I can't object. --

2 THE COURT: I've allowed both of you to interrupt
3 non-responsive answers. I will continue to allow both of you
4 to interrupt non-responsive answers. And it does not require
5 the form of objection you are talking about from either of
6 you. And if I disagree with your opinions as to whether it's
7 non-responsive, I will let the witness proceed. Your
8 objection is overruled. Let's proceed.

9 (The following proceedings were had in open court.)

10 Q. Dr. Suskind --

11 A. Yes, sir.

12 Q. It is a fact, is it not, sir, that if you had the
13 power to modify this agreement, you need not have gone
14 through the charade of calling it a final report, isn't that
15 correct, sir?

16 A. No, sir.

17 Q. Doctor, isn't it a fact that you called it a final
18 report because that's the only way Monsanto would pay you?

19 A. I didn't call it a final report, sir.

20 Q. Doctor, isn't it a fact that it was called a final
21 report by agreement between you and Dr. Roush because that
22 was the only way Monsanto would pay you?

23 A. No, sir. No, sir.

24 Q. Doctor, then why did you call it a final report?

1 A. I said already just a minute ago that I did not
2 call it a final report. You did.

3 Q. No, Doctor. Dr. Roush --

4 A. Dr. Roush.

5 Q. I did not. Roush did.

6 A. Dr. Roush interpreted it as a final report.

7 Q. Doctor, why was it called a final report except to
8 get payment from Monsanto?

9 A. Dr. Roush had to do what he felt was necessary in
10 order for the University to get paid, and we didn't -- we
11 were not concerned whether or not whether he called it the
12 initial report or the post final report or the final report.
13 It wasn't of any concern. But we did have a report to submit
14 and the report you already have, that is --

15 Q. Doctor, my question is --

16 A. That's part of the final report.

17 Q. Why did you and Dr. Roush call it a final report
18 except to get paid?

19 A. Sir, I didn't call it a final report. It wasn't my
20 idea.

21 Q. Why was it called a final report except for the
22 purpose of getting paid, getting money out of Monsanto?

23 A. If that's what Dr. Roush wanted to do, that was his
24 business, sir, not mine.

1 Q. Now you say it was Dr. Roush wanted to do it?

2 A. Well, Dr. Roush felt that that was the way he could

3 --

4 Q. Excuse me. You say Dr. Roush wanted to do it, is
5 that correct?

6 A. I said to Dr. Roush --

7 Q. Excuse me. You say Dr. Roush wanted to do it, is
8 that correct, sir?

9 A. I don't know if he wanted to do it, sir.

10 Q. Excuse me, Doctor. Didn't you just say Dr. Roush
11 wanted to do it?

12 A. I don't know. I can't answer that question yes or
13 no.

14 Q. You don't know that you just said that a moment
15 ago?

16 A. I said --

17 Q. Excuse me, Doctor. Do you not know that you just
18 said a moment ago that Dr. Roush wanted to call it a final
19 report? Didn't you say that?

20 A. Dr. Roush wanted to call it a final report to get
21 paid.

22 Q. Dr. Roush wasn't going to get paid, Dr. Suskind,
23 you were the one, University of Cincinnati?

24 A. Sorry, in order for us to get paid. I apologize

1 for that gross error.

2 Q. Now, Doctor, it was called a final report in order
3 for the University of Cincinnati to get paid, is that
4 correct?

5 A. Dr. Roush did that, sir, yes.

6 Q. Excuse me. It was called a final report for that?

7 A. I said Dr. Roush did that.

8 Q. Would you answer my question?

9 A. I have answered it.

10 THE COURT: Doctor, you have not. It was not
11 responsive. Listen to the question again and answer the
12 question that's asked of you, sir.

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

15 THE COURT: Yes, you may.

16 (The following Side Bar conversation was had outside the
17 hearing of the jury.)

18 MR. HEINEMAN: Your Honor, I object to the Court
19 interjecting himself into that exchange when there has been
20 no objection or no request by counsel for the Court's
21 assistance.

22 MR. CARR: I welcome the Court's assistance. I beg
23 the Court to enter in a similar way in the future.

24 MR. HEINEMAN: I want the record to show I object

1 to it.

2 THE COURT: You may object all you want. If I feel
3 my order is being evaded or the rules are not being followed,
4 I do not have to wait for either of you gentlemen to ask me
5 to intervene, in order to intervene on something like that.
6 Your objection is noted for the record and is overruled.

7 (The following proceedings were had in open court.)

8 Q. (by Mr. Carr) Doctor, would you answer the last
9 question?

10 A. It was called a final report, sir, yes.

11 Q. In order that University of Cincinnati would get
12 paid, isn't that correct, sir?

13 A. I assume that was the purpose of it, yes.

14 Q. Yes, Doctor. Because the University of Cincinnati
15 could not get paid and would not get paid by Monsanto unless
16 it was called a final report, isn't that correct?

17 A. I didn't know that, sir.

18 Q. Doctor, didn't you just get through explaining that
19 to us in your conversation with Dr. Roush --

20 A. That's what Dr. Roush said.

21 Q. Then you did know it?

22 A. Dr. Roush said that to me.

23 Q. Then you did know that, didn't you?

24 A. Yes, sir.

1 Q. Yes. Doctor -- would you hand the witness Monsanto
2 Exhibit 917.

3 THE CLERK: I don't have it. It hasn't been
4 admitted so I don't have it.

5 Q. (by Mr. Carr) Doctor, I hand you what's been
6 marked Monsanto Exhibit 917, which is a memo from a Robert J.
7 Murphy, Superintendent of Health and Safety. Do you see
8 that, sir. You see it, sir?

9 A. Yes, I do, sir.

10 Q. It contains a sentence, does it not, sir, "Attached
11 is a preliminary draft report from Dr. Raymond R. Suskind."
12 Goes on, gives the title, report is dated November 29, 1980,
13 then it goes on to say, "Dr. Suskind is now calling this
14 preliminary report his final report and it has been accepted
15 for payment as such by Monsanto's DMEH," does it say that,
16 sir?

17 A. That's what this says, yes.

18 Q. And it says that you are calling this your final
19 report, aren't you, sir? Doesn't it, sir?

20 A. This is wrong, sir.

21 Q. My question is, it says that you are calling it the
22 final report, doesn't it?

23 A. I have no responsibility for this.

24 MR. HEINEMAN: Just a moment, Doctor. Please, may

1 counsel approach the bench?

2 THE COURT: Yes, you may.

3 (The following Side Bar conversation was had outside the
4 hearing of the jury.)

5 MR. HEINEMAN: Do I understand this is admitted or
6 it's not admitted?

7 THE COURT: I don't have the notebooks on that.

8 MR. CARR: I don't know whether it is or not. She
9 doesn't have it admitted but Dr. Roush identified it and
10 referred to it in his testimony. It was used by counsel at
11 that time. I'll certainly offer it at this time.

12 MR. HEINEMAN: But that isn't what I have as 917.
13 917 is a lot more than just one page.

14 THE COURT: But what the witness has is the full
15 917. I'm just using this portion for my purposes, Counsel.

16 THE COURT: You are referring to the cover letter,
17 right?

18 MR. CARR: Uh-huh.

19 THE COURT: Are you offering it now?

20 MR. HEINEMAN: It's a Defendant's exhibit, I'll
21 offer it.

22 THE COURT: Fine. You don't have any objection, I
23 take it?

24 MR. CARR: Your Honor, they haven't offered it and

1 I will offer it.

2 MR. HEINEMAN: Well, I'm offering it now.

3 THE COURT: I don't care who offers it, it's
4 admitted.

5 (The following proceedings were had in open court.)

6 Q. (by Mr. Carr) Doctor, this memo by Mr. Murphy
7 states, does it not, that you are now calling it a final
8 report?

9 A. That's what this memo states.

10 Q. And Dr. Roush has also testified that it's called a
11 final report at Dr. Suskind's request, you know that as well,
12 don't you, sir?

13 A. If that's what he said, he's wrong, sir.

14 Q. Doctor, my question is you know that's what he
15 said, don't you, sir?

16 A. That's what you have already told me, sir.

17 Q. So this memo says that?

18 A. We are repeating ourselves.

19 Q. So this memo says to call it a final report? Dr.
20 Roush says you say to call it a final report, and the only
21 way you can get paid by Monsanto is to call it a final
22 report, and so it was called a final report, is that correct,
23 sir?

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

1 Q. What's wrong with that, sir?

2 A. If you'll turn to the next page of this, you'll see
3 a letter from me to Dr. Roush that, "Enclosed is a
4 preliminary report."

5 Q. Dated when, Doctor?

6 A. It's dated September 30th, 1980.

7 Q. Yes. When is the memo -- what's the date of the
8 memo where it said --

9 A. June 14th, 1985, sir.

10 Q. I'd like to finish my question, sir.

11 A. Sorry.

12 Q. The memo in which it refers to the preliminary
13 report in the first sentence and where it says that you said
14 to call that preliminary report a final report, what is the
15 date of that memo, sir?

16 A. That is June 14, 1985.

17 Q. Some five years later?

18 A. Almost.

19 Q. Yes. And, Doctor, you have then submitted a final
20 report instead of this one, is that correct, sir?

21 A. We have submitted sections of a final report, sir.

22 Q. I thought you said this morning it was your final
23 report?

24 A. No, I said -- I did not, sir. I said it was

1 sections of the final report which still have to be
2 completely assembled.

3 Q. Doctor, didn't you describe in your testimony with
4 Mr. Heineman on direct testimony, sir, regarding this report,
5 sir, Monsanto 1711? Doctor -- could you give 1711 to the
6 witness?

7 A. Yes, sir, I have it, sir.

8 Q. And, Doctor, did you submit that, sir, as a report?

9 A. We submitted this as a summary statement.

10 Q. As a summary statement?

11 A. A summary statement of a final report which was
12 still to be assembled, but we submitted -- we submitted the
13 data which is summarized in this Exhibit 1711, sir.

14 Q. And, Doctor, this summary was actually not even
15 prepared by you, was it, sir?

16 A. Oh, yes, it was.

17 Q. Sir?

18 A. Yes, it was. Well, it was prepared by my staff.

19 Q. It was prepared by your biostatistician, wasn't it,
20 sir?

21 A. It was prepared by --

22 Q. My question is, it was actually prepared by your
23 biostatistician, wasn't it, sir?

24 A. It was prepared by two people, sir.

1 Q. Doctor, do you recall testifying here when Mr.
2 Heineman was asking you questions referable to Exhibit 1711,
3 starts at Page 70 and goes through Page 72, he's asking you
4 when was this analysis, this 1711, prepared. You say, "I
5 can't really give you an exact date, but I think that an
6 approximation would be about one month ago, it could have
7 been before. It was actually prepared by our
8 biostatistician," wasn't that your answer at that time, sir?

9 A. That's correct, sir.

10 Q. And that's the truth then, sir?

11 A. Absolutely.

12 Q. Then it was prepared by your biostatistician,
13 wasn't it, sir, and not by you?

14 A. Mr. Carr, I --

15 Q. Isn't that correct?

16 A. I don't analyze the data, sir.

17 Q. Was it prepared by your biostatistician and not by
18 you?

19 A. Most of the report was prepared by --

20 Q. Wasn't 1711 prepared by your biostatistician and
21 not by you?

22 A. With my help, but essentially her.

23 Q. Excuse me. Wasn't it prepared by the
24 biostatistician and not by you, Doctor?

1 A. No, sir.

2 Q. Didn't you tell us on direct examination that it
3 was prepared by your biostatistician?

4 A. It was prepared by -- the analysis was done by the
5 biostatistician.

6 Q. That's what we are asking about, Doctor.

7 A. These -- let me finish.

8 Q. That's what I'm asking about, 1711.

9 A. That's what I'm talking about and please let me
10 finish. When these things are submitted by a
11 biostatistician, they are submitted to the principal
12 investigator, which happens to be me, and I reviewed her
13 findings, and we looked at it and then determined whether or
14 not this was a proper and adequate and complete summary, so
15 that if you say preparation, the initial analysis is done by
16 the biostatistician, absolutely, but the final summary is
17 done by the biostatistician and myself, and the other people
18 involved in the analysis of this study, and there were others
19 as well.

20 Q. Doctor, my question to you, though, is didn't you
21 tell us, sir, that it was actually prepared by your
22 biostatistician?

23 A. I did, sir.

24 Q. Doctor, a few moments ago you told us that it was

1 prepared by you and another, didn't you, sir?

2 A. I said it was prepared initially--

3 Q. You didn't say that, Doctor.

4 A. It was initially prepared by the biostatistician,
5 yes, sir, and then the final draft is a draft which is
6 reviewed and edited by myself and others involved in the
7 study.

8 Q. Doctor, you were referring to -- in your testimony
9 to Mr. Heineman, you were referring to this Monsanto Exhibit
10 1711. Would you pass those copies to the jury, please. Were
11 you not, Doctor?

12 A. I sure was.

13 Q. Referring to 1711 when you said, "It was prepared
14 by our biostatistician?"

15 A. The basic material was prepared by her, sir.

16 Q. No, Doctor, that isn't what we were talking about.

17 A. Oh, come on, for crying out loud.

18 Q. Mr. Heineman asked you the question with regard to
19 1711, your response was, "It was prepared about a month ago.
20 It was actually prepared by our biostatistician." Wasn't
21 that what you said?

22 A. That's an accurate statement, sir, yes.

23 Q. Doctor, the record would show that we received a
24 copy of it at 4 p.m. on the 12th of February, 1986, and

1 Doctor, that was two days after you started testifying,
2 wasn't it, sir? You started on the 10th of February?

3 A. If that's accurate, it is two days after I started,
4 sir.

5 Q. And, Doctor, would you look -- would you mark
6 this? Doctor, Exhibit 1808 is the remainder of the material
7 that was given to us on the 12th of February, 1986, you
8 recognize that as the data that you say was being assembled?

9 A. Sir, this is not the remainder. This is the bulk
10 of the report, sir, not remainder. This is a summary. And
11 this is the bulk of the report, and you also have another
12 segment of this which you took off my desk here at the
13 beginning of this trial.

14 Q. What is that, sir?

15 A. Which describes what's in here.

16 Q. Your own notes, Doctor, that you submitted to no
17 one?

18 A. They are not my notes, they are a summary -- they
19 happen to be a description of what is in those tables.

20 Q. Did you submit that to Monsanto?

21 A. I don't know. I believe I did.

22 Q. Doctor, what it was that you supplied to me under
23 the Court's rules was a copy of some of your notes analyzing
24 the data, and was in no way anything submitted to Monsanto or

1 in no way submitted in the nature of a final report, isn't
2 that correct, sir?

3 A. No, I believe I'm talking about this, sir. Now is
4 this part -- is this what you have? That's what I'm
5 referring to, sir.

6 Q. In addition to the other documentation, Doctor?

7 A. I don't know whether this is what you have there or
8 not. I have no idea. But I didn't -- I haven't gone through
9 that exhibit that you showed me, except cursory.

10 Q. Doctor --

11 A. But you have this. I'm sure you do.

12 Q. Doctor, if you would look to your written reports
13 on your preliminary draft which has been called a final
14 report, is there any mention made in that report or in any of
15 the reports as to the health status of these workers.

16 Q. Including this summary analysis, Doctor?

17 A. I believe that the data itself --

18 Q. Excuse me, Doctor, the data is there. My question
19 is, sir, is there any reference in your preliminary draft, in
20 your final report, or any other document, as to the health of
21 these workers, sir?

22 A. Sure, there is.

23 Q. Would you direct me to it, please? In which
24 document is it?

1 A. Well, I believe that -- If you are going
2 chronologically, I believe that on Page 6.

3 Q. Which document?

4 A. This is the initial one, September 9, 1980.

5 Q. On Page 6?

6 A. Right, starting with result.

7 Q. Yes.

8 A. The significant clinical observations.

9 Q. Excuse me, on Page 6, sir?

10 A. And 7.

11 Q. Yes. Where does it say anything about the health
12 of these workers other than the fact they got chloracne?

13 A. Well, I believe if you'll go further you'll see --

14 Q. Doctor, I haven't found anything yet where it says
15 anything about their health other than the fact they got
16 chloracne, some of them.

17 A. Well, I believe that the clinical laboratory
18 findings are discussed and printed in Tables 15 through 22
19 and --

20 Q. Doctor --

21 A. Let me finish, sir. There is a discussion of the
22 laboratory findings, and there is a discussion of the --

23 Q. Where is the discussion of the laboratory findings,
24 Doctor? Let's do this one at a time if you would.

1 A. All right, on Page 8.

2 Q. Page 8 is laboratory findings?

3 A. 8 and 9.

4 Q. Where does it discuss it, Doctor?

5 A. In the analysis of laboratory data possible
6 correlations between history of chloracne and residual
7 chloracne and levels of test results were examined.

8 Q. Yes, Doctor, what you are doing and what this
9 report does is compare people with chloracne lab results with
10 people who have not got chloracne. Doctor, my question to
11 you, sir, is to exclude reference to chloracne. There is no
12 question about it, the study talks about chloracne. Every
13 table in there discusses chloracne.

14 A. Sure.

15 Q. My question, sir, is where is there any mention of
16 the health status of these workers other than their
17 chloracne?

18 A. There is in this report, sir.

19 Q. That's what I'm asking you, sir, refer me to the
20 page, sir.

21 A. Page 9.

22 Q. Page 9? Where does it talk about the health, other
23 than comparing chloracne persons, HDL, with people who don't
24 have chloracne, VLDL, with people in the plant without

1 case is going on for a length of time, that it should be
2 mistrialed. I haven't heard counsel give any argument that
3 the case is in a posture that the jury can't understand the
4 issues. The jury understands the issues quite clearly, and
5 perhaps that's the reason counsel wants the mistrial. The
6 jury does know what's at stake. It does know the issues
7 here, and counsel suggests that jurors might not be able to
8 recall the name of the plaintiff. I don't remember whether
9 Jim recalls or not, but in law school I took two months after
10 one summer in order to work in order to make a few dollars to
11 continue on with law school. This is at the end of my fourth
12 semester in law school, came back to law school, and started
13 the semester the next -- the fall semester after the summer
14 of work and couldn't recall the name of friends that I had
15 sat down next to and for two years had been working with.
16 Couldn't recall the names I sat right next to them and drank
17 beer with them and everything else. So simply because a
18 juror might not be able to call the name of a plaintiff,
19 isn't an excuse for mistrial, because I'll confess that I
20 have a similar problem. But at the conclusion of this case,
21 the jury will have the charts that have gone into the
22 evidence in this case, without objection by counsel. Each
23 chart has a picture of a plaintiff on it, it has their
24 problems and counsel cross examined, or Judge Craven wasn't

1 here, he wouldn't be aware of that, has cross examined the
2 witnesses as to the symptoms and findings and laboratory
3 results on those charts, and the jury has taken notes with
4 reference to that cross examination, and they will be able to
5 call back the evidence.

6 Now, counsel says something or another about the
7 length of the case and titled in with some test case which
8 somenow or another escaped me. Your Honor, Monsanto said
9 when the case was complex and had third party complaints and
10 cross claims involved said it would take a year. I said that
11 it would take six months, and finally I compromised and said
12 it will probably take not more than nine months, so Monsanto
13 said it's going to take a year. I said it's going to take
14 nine months on a consolidated basis. We were both wrong and
15 enormously wrong. Neither of us, maybe perhaps Monsanto knew
16 more than I knew about the length of the case because they
17 now the tactic that they were going to use to defend this
18 case. And they knew the evidence that they had hidden and
19 had not produced until nearly, well, they hadn't produced the
20 significant evidence on punitive damages until after the case
21 had been going on for a year, and Monsanto knew that. They
22 knew more than I know.

23 Your Honor, we have analyzed for the Court and I've
24 heard no quarrel from counsel with that analysis, that

1 fifteen months, 60 percent of the time that's transpired thus
2 far has been spent on issues on evidence that would be
3 introduced were there one plaintiff or a thousand
4 plaintiffs. That is the evidence dealing with the toxicity
5 of dioxin, its effect upon human beings. The actual
6 occurrence itself, and the punitive damage aspect of the
7 case, that would be -- Your Honor, can you fathom a case for
8 one plaintiff lasting fifteen months and knowing that you've
9 got 65 more or 22 other cases sitting? As I pointed out, it
10 would take 27 years for this Court to dispose of that case.

11 Now, all of the evidence that came in during those
12 fifteen months was proper, was important, and should be in
13 evidence in order to prove the case. It had to be in
14 evidence in order to prove the case. Very rarely did counsel
15 make objections that something was not relevant to the
16 issues. When they did make it, it was clearly demonstrated
17 how it was relevant to the issues. Their own defense, Your
18 Honor, has gone on now, what, ten months, or eight months,
19 whatever, since August or, yeah, seven months, since that
20 time, and I don't know how close we are to finishing their
21 case. So, length of case is not a reason not to consolidate,
22 because if other aspects of it, fifteen months and yet got 21
23 more cases to dispose of? Impossible for this Court or
24 anybody else to handle it, and I don't know of a rule of law

1 that says a case, simply because it is long, cannot be
2 tried. Because actually that's what counsel is saying, a
3 case that's going to last fifteen months should not be
4 tried. That's what they are saying. And they are saying
5 that a jury can't understand a case that's going to last
6 fifteen months, leading to the logical conclusion then no
7 case is going to last more than four weeks should be tried or
8 more than four months should be tried or be heard. Then we
9 have got no remedy for cases where people are injured as
10 massively as this group of people have been injured in this
11 case, or as an individual would be under the punitive damage
12 aspect. So that's saying, okay, we are not going to try
13 these cases. That's all the argument I've heard from
14 counsel, simply the length of the case, but this case, even
15 if we accepted a four-month rule to try the individual cases,
16 an unconsolidated case, they said, and we all said would last
17 four months, Your Honor, that's 88 months right there, if
18 this Court had not consolidated. If we dispose of these
19 cases in 36 months, if this case should last three years,
20 this Court has saved, by consolidation, has saved us 50
21 months of trial time by consolidating the case.

22 Now, counsel alluded to the test case. Now, Your
23 Honor, what we said in February was that a test case, unless
24 it's going to be binding on somebody, is useless. It's

1 worthless. Would Monsanto pay us for the other 22 cases if
2 we won the first one? No. As they obviously haven't offered
3 a dime to settle this case, do you think they would offer a
4 dime to settle the others? No. They would say we will fight
5 them all, and that's been their tactic. So this Court has
6 saved us, if we last three years, this Court has saved 50
7 months of time. Monsanto, as the Court asked Monsanto, will
8 you be bound by the results of this test case, and that
9 question was answered negatively by Monsanto as they had the
10 right to do it, but when they answered it that way, this
11 Court had no option. If it wanted this county to continue in
12 existence, no option but to consolidate the cases. Even if
13 they were to last four months rather than fifteen months for
14 common issues as the evidence has come out, we are confronted
15 with the trials that would last either six years on an
16 unconsolidated basis -- if it were four months in trial -- or
17 27 years if it's a fifteen month trial. I submit, Your
18 Honor, this Court had no choice and an Appellate Court
19 reviewing this case will find there is no choice when
20 confronted with this. Or the only other thing the Court can
21 do is say no, these plaintiffs cannot band together. Not
22 even alluded to that, because that's gone into in our brief,
23 is the cost. There is no conceivable way that one of this
24 group of 22 people, one could come into this courtroom and

1 fight this monster Monsanto the way it's been going here. No
2 conceivable way. So if you don't allow these people to band
3 together to pool their resources for this kind of battle,
4 then we have given up the day, the corporate giant, those
5 that have the resources and the will to fight this kind of
6 battle, would have prevailed.

7 Your Honor, it would have been easy for me -- I
8 don't need this case. I've done the things in my life that I
9 consider I'm proud of and successful. I don't need this case
10 to add to a stock of victories. But the fact that Monsanto
11 believes that they can run over this Court, the fact that
12 they apply to the Appellate Court or the Supreme Court when
13 they know it's improper so to do, in order to try to
14 intimidate this Court, in order to try to pervert the ends of
15 justice, and I say I'll go to the end of my life, if
16 necessary, in order to thwart Monsanto's obvious tactic of
17 victory, to achieve citory in this particular way, and I
18 think the Court should deny the Motion for Mistrial.

19 THE COURT: Do you have any short reply?

20 MR. NASSIF: Your Honor, I'm going to reply and I
21 can tell right now that it's not going to be short, and I
22 know Your Honor has to leave at six o'clock.

23 THE COURT: I do.

24 MR. NASSIF: So might we carry this over until

1 tomorrow morning?

2 THE COURT: Why don't you start and I'll give you a
3 few minutes. I'll tell you when to stop.

4 MR. NASSIF: Your Honor, I would just like to ask a
5 question of the Court, because Mr. Carr has said something
6 that is very surprising to me, and I, quite frankly, don't
7 know how he knows this. I sat in with the Court in all the
8 conversations having to do with Mrs. Melton and I never
9 recall either Mrs. Melton or the Court telling us that Mrs.
10 Melton was informed that the trial might proceed without her,
11 and that she made it clear to the Court that she didn't want
12 that to happen, which is what Mr. Carr said that she said. I
13 don't recall that in any conversations. I would ask the
14 Court if to somehow let me know if I'm wrong in my
15 recollection, because I'd like to go back through the
16 transcripts of our discussions regarding Mrs. Melton and find
17 where the Court reported that to us, because I don't, quite
18 frankly, have any idea how Mr. Carr knew about that, because
19 I don't recall in any of the conversations that I
20 participated in --

21 MR. CARR: Let me interrupt on that point. Might
22 have been Marlene told me that or might have been the Judge
23 in the hallway said that Marlene said that. I'm not
24 confident that it was the Court that told me that.

1 MR. NASSIF: If that's the way Mr. Carr found out
2 about that information, Your Honor, I think we have some
3 serious -- we have some serious business to take care of
4 outside of these two motions about whether or not Mr. Carr is
5 finding out what in fact the jury's feeling are either
6 regarding their participation in this case from people
7 outside of Your Honor, which I don't think is proper, Your
8 Honor, at all.

9 MR. CARR: May have been from the Court, I'm not
10 saying it was Marlene. I'm telling you that --

11 MR. NASSIF: I'm saying if it came from the Court,
12 I never heard it from the Court. I sat in on all the
13 conversations relating to it. It would have certainly been
14 something that I would have recalled, and I don't recall it
15 right now. But we would like -- my client would like an
16 explanation of that situation, Your Honor, if we could, if it
17 would please the Court.

18 Secondly, the jury may indeed recognize that this
19 is a monumental case, as Mr. Carr suggested, because he's
20 been telling them in everything he said to the newspaper that
21 this is his dying swan case, that he wants to make history.
22 If he can leave something behind in his -- in his poor little
23 old way, quoting the times magazine article that Mr. Carr
24 quoted, that this is his goal in life, his last gasp, so to

1 speak.

2 MR. CARR: I hope not.

3 MR. NASSIF: I think the very fact that he suggests
4 this jury knows this is a monumental case is an issue that
5 has to be considered when the Court is considering whether or
6 not we are going to voir dire these individuals or not,
7 because I think Mr. Carr has done everything he could to make
8 them think this is monumental and if they let the chemical
9 company off the hook that indeed the world will end, if
10 nothing even more dramatic than that. Mr. Carr has made an
11 affidavit to the effect, and he's reiterated those comments,
12 Your Honor, about the fact that this is an extraordinarily
13 attentive jury, and that they take notes continuously, and
14 he's raised this issue again. I would just remind the Court
15 that the jury was admonished last summer about sleeping, and
16 in fact the jury responded as pointed out in a letter that
17 they posted on the bulletin board in the jury room which was
18 reported by the Chicago Law Bulletin where the question was
19 raised by the jurors, to sleep or not to sleep that is the
20 question. I would like to read this into the record so that
21 --

22 THE COURT: It's part of the record as part of the
23 motions, you don't have to read it.

24 MR. NASSIF: I did not see this article was part of.

1 the motions. It was not in the group we submitted.

2 THE COURT: Rather than taking the time to read it
3 in, I'll allow you to file it.

4 MR. NASSIF: I would just for the record in
5 response, since Mr. Carr has filed an affidavit, I will also
6 like to note for the record I have been here since March 5th
7 1985, in this courtroom. We will be filing an affidavit
8 contrary to the one that Mr. Carr filed about whether or not
9 the jury has been extraordinarily attentive and takes notes
10 continuously.

11 On that point, Your Honor, I would like to note
12 that as of Wednesday at 4:27, I noted that nine of the jurors
13 had their eyes closed and their heads in a position that was
14 not upright, and I would only like to suggest, Your Honor,
15 that I don't know if they were sleeping, but I can assure
16 you, Your Honor, they were not taking notes.

17 In addition, it is difficult -- it is difficult for
18 me to believe when I'm staring at a parka that has covered
19 somebody for practically the entire day, whose arms have not
20 come out of that parka, to have to sit here and say that
21 individual took any notes today, and I would say there are
22 more than one juror who has covered themselves for quite
23 sometimes, because the courtroom is cold, and I am not saying
24 these people are in any way unreasonable by sleeping through .

1 this trial, quite frankly, I have seen Mr. Carr lay his head
2 down on the table on several occasions. And I'd have to say
3 that anybody that hasn't slept during this trial is probably
4 superhuman. Suffice it to say that a lot of sleeping goes
5 on, and we are going to respond to that affidavit, to Mr.
6 Carr's affidavit by our own affidavit.

7 On more of these issues, Your Honor, about our
8 defenses lasted seven months, I would just comment on that.
9 Your Honor, Mr. Carr says that we have taken seven months to
10 try this case. I would comment that Mr. Carr has taken two
11 months to cross examine Dr. Suskind of our seven months, so
12 quite frankly, we only tried our case for five months.

13 In addition, on his calculation as to how much time
14 would have been saved, just for the record, Your Honor, we do
15 not agree. We do not agree with Mr. Carr's calculations as
16 to how much of the trial was related to individual issues and
17 how much of the trial was related to group issues. We don't
18 agree with that calculation at all. As a matter of fact, we
19 disagree with it quite strongly.

20 And the charts that Dr. Carnow has used we objected
21 to the use of those charts when they were first introduced
22 into evidence, Your Honor, we objected to them. We felt at
23 that time they were misleading. How is a juror supposed to
24 know when they see a red dot next to calcium whether that

1 means it's an abnormality, whether that means the calcium is
2 high, calcium is low, triglyceride is high, whether it is
3 low, whether or not low triglyceride is an unhealthy person,
4 whether high triglyceride is a healthy person from a dot
5 staring them on the chart.

6 THE COURT: How much more do you have?

7 MR. NASSIF: Not very much more.

8 THE COURT: Can you do it in a few minutes?

9 MR. NASSIF: Yes, I can. The question of the
10 significance of those dots is what those twelve people are
11 supposed to decide. That's what those twelve people are
12 supposed to decide. Not whether or not how many dots are on
13 the chart. What is the significance of a dot in a particular
14 box. That is what these people are being asked to do in 65
15 individual cases.

16 On this issue of whether Mr. Carr wanted
17 consolidation or not, I've read this transcript from February
18 10th where this discussion came up. I don't see anything in
19 this transcript where Mr. Carr said if I could try a case
20 involving one plaintiff and it would be binding and the
21 Defendants would agree it would be binding, I would agree to
22 consolidation. I don't find that in this February 10th,
23 1983, transcript where the issue of consolidation is
24 discussed, Your Honor, so I don't know whether Mr. Carr said

1 it at some other time. He may very well have said it. Let
2 me tell you this, there is no way Mr. Carr would have agreed
3 to going forward with one family or one individual in this
4 case, because his whole case is based upon the effects on 65
5 people. He has put in his evidence on that fact alone, that
6 if you got 65 sick people then something must have caused
7 it. He would never have considered going forward without
8 those 65 people's health effects being in front of this
9 jury. So in that sense he's right. No matter how you would
10 have set this case up, it still would have taken three years,
11 because that's the way he would have tried to put his
12 evidence on in this case, to prove that in fact something was
13 wrong with these people. So I don't believe that Mr. Carr
14 ever would have agreed to a trial of one individual in this
15 case, and I don't think he ever did agree to that.

16 And Mr. Craven has one remark.

17 MR. CARR: Let me respond to that, please, Your
18 Honor. It wasn't me. It was the Court in November of 1983
19 that asked the question of Monsanto. I'm not saying that I
20 would have ever agreed to a test case. I wasn't asked. The
21 Court asked Monsanto in November of '83 and Monsanto said,
22 no, they would not be bound by a test case.

23 MR. CRAVEN: Well, Mr. Carr in his objections said
24 Monsanto wouldn't take the test case and thereby avoid

1 multiplicity of trials on the issue of liability.

2 THE COURT: I read that.

3 MR. CRAVEN: Well, he was saying that if we'd agree
4 then we would avoid the multiplicity of trial and implicit in
5 that is a representation that he would have agreed. Now, at
6 some point, there has to be a litmus test of who's saying
7 what and when and who's asserting what.

8 It's true, I've not been here all the time during
9 this trial. And, I have to say that on those occasions that
10 I have been here, I was here last week and there was a
11 reporter from the Sun Times, and he was listening to this
12 trial and he didn't understand that it wasn't a trial
13 involving some workers at Nitro, and I've been here at times
14 when I thought we were trying Agent Orange or Times Beach or
15 Nitro or Lysol or whatever. And I suggest that even under an
16 order of consolidation this case wouldn't have taken more
17 than a few months if it had been this case that was being
18 tried and not all of the other ancillary stuff that Mr. Carr
19 is intentionally dragging in for the jury.

20 But the fact of the matter is, Judge, by way of
21 summarizing, this case is out of hand, out of control,
22 undecidable in an intelligent way by a jury, and it's an
23 insult to the process to ask a jury to sort out the claims of
24 65 people under those circumstances, and the Motion for

1 Mistrial, because of the erroneous consolidation, should be
2 granted.

3 THE COURT: Okay. Gentlemen, I'll send you the
4 orders. Thank you. Court's adjourned.

5 COURT ADJOURNED:
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1 STATE OF ILLINOIS)
2 TWENTIETH JUDICIAL CIRCUIT) SS
3 COUNTY OF ST. CLAIR)
4

5 I, DEBRA M. MUSIELAK, certify the foregoing to be a
6 true and accurate transcript of the testimony and proceedings
7 in the above-entitled cause.

8 Dated this 7 day of April, 1986.
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Debra M. Musielak

1 STATE OF ILLINOIS)
2 TWENTIETH JUDICIAL CIRCUIT) 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 I
7 have examined the aforesaid transcript of proceedings, and
8 certify the foregoing to be a true and accurate transcript of
9 the testimony and proceedings in the above-styled cause.

10 Dated this ____ day of April, 1986.
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16 HON. RICHARD P. GOLDENHERSH
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IN THE CIRCUIT COURT
TWENTIETH JUDICIAL CIRCUIT
ST. CLAIR COUNTY, ILLINOIS

FRANCES E. KEMNER, ET AL,

Plaintiffs,

vs.

MONSANTO COMPANY,

Defendant.

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CAUSE NO. 80-L-970

IN-CHAMBERS CONFERENCES HELD
AT 9:30 A.M.; 1:30 P.M.; AND 5 P.M.

Before the HONORABLE RICHARD P. GOLDENHERSH

APRIL 4, 1986

APPEARANCES:

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

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

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

Official Court Reporter

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

7 April 4, 1986

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

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

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

19 THE COURT: That was about the juror?

20 MR. CARR: That's correct.

21 THE COURT: And what do you have?

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

1 THE COURT: On that matter?

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

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

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

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

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

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

2 THE COURT: What do you have to say?

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

5 THE COURT: Yes.

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

21 THE COURT: Right.

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

24 THE COURT: What was the October 11th?

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

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

7 THE COURT: This was a hearing on that?

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

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

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

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

11 THE COURT: Any response?

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

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

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

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

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

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

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

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

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

9 MR. CRAVEN: But, Judge--

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

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

20 MR. CARR: Where's that clear?

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

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

1 according to Mr. Carr now--

2 THE COURT: Yes.

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

16 MR. CARR: No.

17 MR. CRAVEN: That's my understanding.

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

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

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

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

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

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

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

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

11 MR. CRAVEN: It was not me.

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

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

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

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

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

22 MR. CRAVEN: I don't know.

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

1 Counsel?

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

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

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

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

15 MR. CARR: Yes.

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

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

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

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

1 ward. That's what the transcript says.

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

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

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

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

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

16 MR. CRAVEN: Without her?

17 MR. CARR: Yes.

18 MR. CRAVEN: When?

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

22 MR. CRAVEN: Is that on record anyplace?

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

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

3 MR. CRAVEN: This was in October?

4 MR. CARR: September.

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

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

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

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

5 THE COURT: He signed it?

6 MR. NASSIF: Yes.

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

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

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

13 MR. NASSIF: No.

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

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

20 THE COURT: Okay.

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

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

1 MR. NASSIF: No.

2 THE COURT: Okay.

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

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

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

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

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

21 THE COURT: Fine.

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

23 THE COURT: Sure.

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

1 (Thus concluding the 9:30 a.m. in chambers
2 conference on April 4, 1988.)
3

4 (The following proceedings were had in chambers
5 out of the hearing and presence of the jury at 1:30 p.m.)

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

11 THE COURT: Just about.

12 MR. CRAVEN: 19 or 20 trial days. This man is 73
13 years old. He is exhausted. He has been living away from
14 home going back getting back late on Friday nights, coming
15 here in time for court the next day. He's--several times
16 his testimony has been interrupted by reason of days off or
17 something, coming here on Monday and no court on Tuesday.
18 I'm not faulting anyone for that; I'm just saying that is a
19 fact.

20 THE COURT: Right.

21 MR. CRAVEN: And we are to a situation where a
22 combination of two things, his health and the fact that
23 he's exhausted and his own schedule. And we need to do
24 something about the rights of this witness. Mr. Carr is

1 indicating--he didn't give us any kind of an indication of
2 how long this is going to continue. And--

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

4 MR. NASSIF: He asked you if you were close to
5 finishing.

6 MR. CARR: That's correct. And I told you I was
7 not.

8 MR. CRAVEN: And there's no way we know this.
9 And in any event, we are now asking that this witness be
10 permitted to interrupt his testimony at this stage and come
11 back after some period of time when he can recover. It's
12 very obvious to anyone, I think, watching this trial that
13 this thing is--the tension is just getting too great. Dr.
14 Suskind is under constant pressure day and night. And I
15 can see Rex being quite different and he's showing the
16 tension. And frankly, your Honor, I see the Court reflect-
17 ing tension that goes on in this courtroom. And it's time
18 to take a break in that; not take a break from the trial,
19 but take a break from this witness and come back to him at
20 a later time when these tensions have abated and when he's
21 recovered. And to continue with this witness under these
22 circumstances just simply--just simply can't be endured.
23 And--

24 THE COURT: What's your thoughts on the matter,

1 Mr. Carr?

2 MR. CARR: Your Honor, what the Counsel requests
3 is first of all in my judgment way out of line, because
4 anything that is occurring relating to the length of the
5 examination of this witness is the making of the witness
6 and it's not my making nor the Court's making. The witness
7 is doing it; he's doing it deliberately; he shows absolute-
8 ly no sign of tension. He's smiling and lughing and from
9 all appearances is having a great time. And I certainly
10 suggest to Counsel that he's way in error if he thinks I'm
11 under any more tension than I have been from the beginning
12 of this case. They are certainly not affecting me nor my
13 ability to function, and he hasn't been here very long that
14 he wouldn't say that I show signs of tension. To put the
15 witness in context, your Honor, he started on the 10th of
16 February, and we had the 11th--that was Monday--the 11th
17 was off and the 12th was off because it was Lincoln's
18 birthday. So, he worked three days that week. The follow-
19 ing week we had no trial on the 17th, that was Washington's
20 birthday, and no trial on the 20th and 21st. He worked two
21 days that week. He couldn't be here on the 20th and 21st.
22 The following week we had no trial on the Monday because I
23 had to be in the Fourth District Appellate Court in Spring-
24 field, and we had four days of trial.

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

2 MR. CARR: That's correct. The Judge was sick
3 For--

4 THE COURT: For about four days.

5 MR. CARR: Three days that week plus the fourth
6 day we had Motions. A juror was not in the courtroom; a
7 juror had problems getting there, and so we didn't have it.
8 So, actually that week no problems at all with him being
9 here; he had a long time off. The week of March 3rd, at
10 the request of Dr. Suskind we shut down on Wednesday. We
11 had two days at the beginning of the week and two days at
12 the end of the week.

13 THE COURT: Right.

14 MR. CARR: The week after that we had court on
15 Monday, no court on Tuesday, no court--and court on Wednes-
16 day, no court Thursday or Friday.

17 THE COURT: Right. That was when I was on the
18 faculty of the judicial conference.

19 MR. CARR: We had two days of court that week.
20 The following week, the week of March 17th, we had no court
21 on the 18th and we ended court at 3 p.m. on Friday the
22 21st. So, we had three and three quarter days of trial
23 that week. The following week, the week of March 24th, we
24 had no court on Thursday and Friday. We had three days of

1 court that week. The following week we had no court on
2 Tuesday. We had four days of trial that week. And that's
3 the week we're in right now. This is the longest. We've
4 had four days of trial this week, your Honor. There has
5 been no burden. We have not had since this witness has
6 been here a week of solid trial. We have had many breaks,
7 many recesses, to accommodate this witness and because the
8 Court was sick and because of the conferences and because
9 of holidays. This witness--I could have finished with this
10 witness inside of a week if the witness had responded as a
11 witness is expected to respond and as this Court directed
12 him to respond. He has simply refused to do so. Now,
13 Counsel apparently now is saying that they can't control
14 him; that he's out of control. Well, it appears to me that
15 if he's out of control, that certainly is his problem. And
16 he's a very experienced--he doesn't show the least sign of
17 fatigue nor the least sign of being concerned or upset
18 about his deliberate flaunting of the Court. I could
19 finish this cross examination of him next week without any
20 problems whatsoever--without a question I could finish this
21 cross examination next week if the witness were to respond.
22 We have had to go back again and again and again to re-
23 establish points already established. There isn't a day
24 goes by that I don't have to re-establish points already

1 made. The best example of what's occurred is just here
2 right before noon. I started out trying to establish the
3 problems with the HDLs. We finally end up right before
4 noon, "Well, I said that all the time in my report." as if
5 what do we have this dispute about. He denied it to start
6 with, and then he ends up saying, "Well, I said that all the
7 time; there's no problem with that."

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

14
15 (Thus concluding the 1:30 in chambers conference
16 on April 4, 1986.)

17
18 (The following proceedings were had in chambers
19 out of the hearing and presence of the jury at 5 p.m.)

20 THE COURT: All right.

21 MR. CRAVEN: Judge, we are back on the question
22 of interrupting the--

23 THE COURT: Right. Had you finished your presen-
24 tation?

1 MR. CARR: Yes. I had finished I thought.

2 MR. CRAVEN: I had assumed so.

3 MR. CARR: Yes. And I thought you had started
4 already. Maybe not.

5 MR. CRAVEN: No, I hadn't started. We are
6 prepared to furnish if the Court thinks it's necessary, a
7 certificate from a doctor saying that it is unwise with
8 someone who is 73 years old and has a heart condition to
9 undergo this kind of stress. One only has to sit and
10 listen to something that happened in this courtroom this
11 afternoon. It is just clear stalling having this witness
12 sit there and read exhibits, "Doesn't it say this?" and
13 "Doesn't it say that?" That's been going on for days that
14 I've witnessed. This is just holding a witness hostage
15 trying to make him comply with Mr. Carr's absolute precon-
16 ceived notion that everyone has to use his same kind of
17 words. This is just more than this witness can endure, and
18 we want this witness excused from the stand and he will
19 come back and Mr. Carr can resume his cross examination.
20 But, we want him excused as of today and start with some-
21 thing else Monday. We have the request for voir dire, and
22 I have some kind of confidence that it will be allowed; and
23 we could spend Monday on voir dire of witnesses, Tuesday is
24 no court, and we have a witness ready to come in on Wednes-

1 day. And I have to say I've been back here a lot on
2 Motions. The only time we've ever gotten anything is when
3 Mr. Carr agrees. We can disagree, and he wins. And,
4 Judge, I have been down here on I don't know how many
5 times, and I have heard one objection by Mr. Heineman or
6 Mr. Musgrave sustained. I almost fell out of the chair
7 yesterday when one was sustained. And we are in that kind
8 of a thing. But, I'm telling this Court that this witness
9 is exhausted. I'm telling this Court that Mr. Carr is
10 abusing this witness, and no fair reading of the transcript
11 or more appropriately no fair listening to the tape will
12 tell any fair-minded person that he's doing anything and
13 everything that he can to harass, intimidate, and abuse
14 this witness. And the witness has to have a break. He
15 simply has to have a break. And I'm also suggesting that
16 we shouldn't have to go running up to reviewing courts
17 asking for some kind of relief in these kind of indica-
18 tions when there is a compelling need for this kind of
19 relief on the witness. We also have to prepare, and Mr.
20 Carr is always saying he doesn't have time, but we have to
21 prepare the affidavits that--Mr. Heineman and Mr. Mus-
22 grave--with reference to the matter that developed last
23 night which we consider to be very serious. You said you
24 were going to consider it as a Motion to Re-examine that.

1 I think the Court is going to want to give that some very
2 serious attention, and we need a few days to do that, so
3 does Mr. Carr. That's a compelling matter of interest to
4 all of us, and yet you are forcing us to go ahead with a
5 trial with a juror with a situation where we think there
6 are very serious impediments to this kind of procedure.

7 THE COURT: I don't want to reargue that Motion.

8 MR. CRAVEN: I know. I'm just saying what we can
9 do with the time.

10 THE COURT: Okay.

11 MR. CRAVEN: It seems to me that we are entitled
12 to a break. We are entitled to let this witness take some
13 time off and recuperate and get out from under this kind
14 of stress. Now, who wants the responsibility of this kind
15 of pounding of a witness for this--we would be going on--
16 the 10th of April starts his third month. And that's just
17 unbelievable. And I can't believe that Rex is opposing it,
18 but he is opposing it.

19 MR. CARR: Believe it.

20 MR. CRAVEN: And I understand his batting
21 average. But, I'm suggesting this is one we want to win.
22 And I'm suggesting we want this witness to get some rest.
23 And I'm suggesting that not to do so is a clear abuse of
24 discretion.

1 MR. CARR: IF I might respond to the remarks of
2 Counsel. There's about three subjects that he touched upon
3 rather than the one the Court asked for, and I'm con-
4 strained to respond to at least one of them if not all
5 three. His suggestion that this Court has been sustaining
6 my objections and overruling their objections implies that
7 this Court is not acting in a judicial and fairhanded and
8 fair manner, and quite frankly, I think that's a serious
9 charge--implication--on the part of Judge Craven to make
10 about this Court, because the clear implication is there,
11 and he's put it there because he contemplates apparently
12 this record to go up on another supervised order, and he
13 put it there for a purpose something like Gobles, I
14 suppose. If you make a charge often enough and strong
15 enough and loudly enough, you'll find people that will
16 believe it. And that's apparently what he's operating on.
17 Or perhaps it could be because of ignorance, because he has
18 not been in a courtroom defending a lawsuit before and
19 perhaps he hasn't tried many cases and that he's speaking
20 from ignorance. If he is, I'll forgive him.

21 MR. CRAVEN: I'm going to interrupt you.

22 MR. CARR: I'll forgive you of that.

23 MR. CRAVEN: May I interrupt just a minute? Just
24 a minute, please.

1 THE COURT: You'll get your chance; just a
2 minute.

3 MR. CARR: A tactic that is developed to a
4 skill--to a fine skill--by defense lawyers, because they are
5 interested in a reversal--always a reversal---is to make
6 objections, outlandish objections, that are not based upon
7 any law or any evidence or any logic or reason, whereas the
8 plaintiffs' lawyers, who know that this record is going to
9 be scrutinized by Appellate judges and by Supreme Court
10 judges, refrained from making objections that are not
11 proper and cannot be sustained appropriately. And that
12 happens to be the way plaintiffs and defendants try cases.
13 Defendants try cases hoping that the Judge will erroneously
14 overrule one of their objections and thus make a record for
15 reversal. This is standard operating procedure. It has
16 been the operating procedure of Counsel in this case in my
17 judgment. And it would be assinine for me to spend two
18 years in a case and take positions that I knew would be
19 reversible error. It would be stupid for this Court to
20 take two years in this case--because we know for a certain-
21 ty this case is going on appeal; we know that from what
22 they have said here and in the past elsewhere. We know
23 that for a certainty. Neither this Court nor plaintiff's
24 Counsel, I think, are of a mind to do stupid things and go

1 on for two years for no end, for it to be a reversal.
2 There's no doubt in my mind but what this Court has
3 overruled objections when it's believed it's proper to do
4 so. There's no doubt in my mind that I know that I have
5 never made an objection that I thought would be reversible
6 error for the Court to sustain. And I never opposed
7 objections of Counsel on the other side where I believed to
8 do so would cause the Court to commit reversible error.
9 I'm trying this case in the best way I know how to prevent
10 reversible error. And I think the charge that Judge Craven
11 has made is either, as I've said before--well, I think it's
12 from ignorance. He doesn't know any better. But, that's
13 the way these lawsuits are tried. Now, on the statement
14 about "Well, he hasn't won any, and therefore he sure wants
15 to win this one", that is a ploy and I hope it won't
16 influence the Court, designed to say, "Okay, I'll throw you
17 something." No, this Court should rule for the request of
18 Counsel if he believes it's proper and appropriate to do
19 so. But, he should not rule for Counsel simply because,
20 "We haven't had something in a long time, please give us
21 something." This Court should in my judgment and has in my
22 judgment ruled on the merits of each Motion made and each
23 objection made, and I hope the Court will continue to do
24 so. Now, on the merits of this particular matter. They

1 have said they will furnish an affidavit signed by a doctor
2 that stress is bad for somebody with a heart attack--or a
3 heart condition. There's no need for such an affidavit;
4 everyone knows that stress is bad for people with a heart
5 condition. We don't know that this particular witness has
6 a heart condition. I haven't heard from his doctor that
7 the man is unable to sustain the cross examination. They
8 brought him forward representing to the Court that he would
9 be able to withstand this cross examination. He underwent
10 weeks of examination in Nitro, West Virginia and didn't ask
11 for a recess to my knowledge.

12 MR. NASSIF: Two weeks.

13 MR. CARR: Well, two weeks. And it's more than
14 two weeks, Counsel. I've got a stack of transcripts from
15 it. But, nevertheless, he didn't ask for any recess there,
16 and I haven't heard the witness say that he's unable to
17 take further cross examination and needs an excuse for
18 medical reasons. I haven't seen an affidavit from his
19 treating doctor that says he is unable to continue Monday
20 for medical reasons. While the implication is there that
21 they can get an affidavit from a doctor that stress is bad
22 for somebody with a heart condition, we'll concede the
23 point. But, we haven't heard yet that that's any medical
24 reason to apply to this witness. This witness has got the

1 entire weekend to rest. He'll be back one day Monday and
2 then he'll have another day to rest and then he'll have
3 three days to continue on. Certainly whatever recuperative
4 powers he's got can come into play in the two days for
5 this weekend and one day next Tuesday. If at the end of
6 next week it should appear that he needs an extra day, I
7 don't oppose recessing for another day if he needs it--and
8 I don't think he needs it. But, I absolutely oppose taking
9 this witness off the stand and putting another witness on
10 in his place. We agreed to have this witness go off the
11 stand for his reasons that he had to fly here or fly there
12 or do this seminar or do that. We agreed to that. We will
13 certainly not agree to taking another witness on in his
14 stead next week or at any time in the future. I have a
15 forecertainty that if he comes back at some later date, I
16 will have to re-establish everything that I have with great
17 difficulty established to date, and it would be an inordinate
18 waste of judicial time so to do as well as probably
19 interrupt the next witness on cross examination for him to
20 come back. So, absolutely, I oppose any kind of recess as
21 suggested by Counsel.

22 MR. CRAVEN: It's said that he gods would
23 destroy, they first make man; but, the analogy to Gobles is
24 not fitting you Rex; and even an argument of that kind of

1 misuse of anything is demeaning to what I thought you were.
2 I resent it. I reject it. And I think you can have it
3 back. And for him to use that kind of thing even under
4 those circumstances I find absolutely unprofessional, and I
5 would like it stricken from the record and I would hope
6 that he would apologize. That's just outrageous, absolute-
7 ly outrageous; but typical of what he's doing in this
8 trial; typical of the way he's abusing the judicial
9 process. And for him to talk about Gobles and then sit
10 over there and say that Dr. Suskind was examined for weeks
11 in West Virginia when it was two weeks, when he's been
12 under stress here for two months and suggests that this is
13 somehow lesser of a strain than that, and who is going to
14 talk about Gobles? Now, Judge, this witness is no longer
15 able to endure this. It's time to do something about it.
16 Now, talking about the suggesting that Mr. Carr always
17 wins. That's not a question of anything except count.
18 I've been back here, and we have not won anything when Mr.
19 Carr opposed us. That's a fact. I've sat in that court-
20 room and I have not heard any objections sustained. I did
21 hear one the other day. We are endeavoring to count them,
22 for whatever use it will be made in the future, we are
23 counting, just doing a count. But, the only thing we are
24 suggesting is that this witness be given a chance to rest,

1 get out from under the stress of this thing which Mr. Carr
2 is intentionally doing. And to say that he's cross exam-
3 ining a witness that was on the stand in direct for two and
4 a half days, or certainly less than three days, and he's
5 now getting ready to start his twentieth day of cross
6 examination by making the witness read exhibits that
7 weren't even touched in direct examination--and I'm not the
8 world's greatest trial lawyer, Rex, and I don't purport to
9 be, and I haven't had a tremendous amount of trial experi-
10 ence, as you suggest; but, I've had enough to know that
11 cross examination was always limited to the scope of the
12 direct. And I found that out a long time ago. But, he's
13 doing this deliberately. This is a deliberate ploy to
14 abuse this witness, because he wants this witness to bend
15 to his will. This is just a deliberate ploy, and the
16 witness is showing the stress. As a matter of fact, I
17 assume that maybe some of Mr. Carr's remarks indicate that
18 he's showing the stress. We want this witness off the
19 stand so that he can recoup, and he'll be back.

20 THE COURT: Okay. I am denying the Motion, and I
21 am denying it for a number of grounds--number of reasons.
22 First of all, this--the first part of your Motion. He's
23 been on the stand a long time. I don't know how long he
24 was on the stand in West Virginia at Nitro, and I don't know

1 how long he was on the stand at Comp hearings in '66, and I
2 don't really care, because that's not relevant to what we
3 are doing here. The length of time on the witness stand is
4 something that is dependant on a number of things. The
5 main thing it's dependant upon in this particular case, and
6 it's the thing over which he has control, is compliance
7 with the rules of Court, the rules that I've articulated,
8 the rules that I've admonished him about, the rules that
9 Mr. Heineman as an officer of the Court on numerous times
10 has explained to him, both all of them in general and at my
11 request with emphasis on particular ones such as responding
12 only to the question and how to handle assumptions. And
13 really the length of time that this witness is on the stand
14 is something that's within his control. Now, he has so far
15 by his actions extended the length of that variable, and he
16 appears willing to do that, and he appears intent on doing
17 it. And I really am not going to allow this Court to be
18 put in the position of a witness who is deliberately trying
19 to evade the rules of this Court and warp the rules of this
20 Court and obstruct the operation of this trial and then
21 claim that he has become exhausted thereby and needs a
22 break from it. That is an absurdity which I am not going
23 to allow. I have--I was advised earlier as to this wit-
24 ness' age, I think by you Mr. Nassif, back here in chambers

1 I think at the time when we had the argument and we talked
2 about his hearing aid tht he doesn't--that he didn't want
3 to wear up to that point in time. You also advised me that
4 he seemed to be getting tired in the afternoon and perhaps
5 we could do something about that. And there have been a
6 number of times such as one day this week when I've allowed
7 a very long break in the afternoon. And I've kept an eye
8 on him both in the morning and afternoon. And I don't
9 agree with your observation based on my observations
10 looking at him and listening to him and watching him pretty
11 intently. When he has seemed a little slow in the after-
12 noon, we've taken some breaks. You've noticed, if you kept
13 track of the time as well as you claim to have kept track
14 of the objections, you'll notice that there have been some
15 times when we've even taken some long breaks in the
16 afternoon. There have also been some times when--have been
17 some times when we have gone for a shorter period and then
18 taken a break in the afternoon. This witness is in good
19 shape; this witness is in control of himself; he is in
20 control of his faculties; I don't see what you claim to see
21 as far as this witness. And if, for the sake of argument,
22 it were there, he has within his power the ability to
23 shorten his tenure on the witness stand and that is by a
24 simple basic compliance with what this Court has repeatedly

1 requested him to do. As far as your insinuation on the
2 rulings, I don't keep count of who wins how many Motions,
3 because I try to avoid meaningless actions. I try to look
4 at the quality of what I do and not the quantity. And my
5 advice when anyone has complained about rulings against
6 them in this trial as well as others have been that I
7 advise them to look at the quality of the Motions and the
8 objections they make and not the quantity. And I think
9 that advice applies here also. I am denying your Motion.
10 I'm denying it for the grounds stated. And I think that
11 takes care of what your Motion included.

12 MR. CRAVEN: Mr. Carr conceded the question on
13 the doctor's certificate.

14 MR. CARR: I did not concede the doctor's certi-
15 ficate.

16 MR. CRAVEN: All right. Does the Court want--I
17 mean, Mr. Carr is trying to diagnose his condition, and if
18 we give to the Court a certificate by a doctor that his
19 continuation on this stand under these circumstances
20 without a break can be dangerous, injurious, to his health,
21 is the Court still going to persist in His ruling?

22 THE COURT: I don't rule on things before I see
23 it. If you want to submit something to me, you are free to
24 do so at any time; but, I'm not going to be making advisory

1 rulings on this or anything else. And I'm not--wait a
2 second, because I haven't fully addressed it yet.

3 MR. CRAVEN: I'm sorry.

4 THE COURT: I'm not going to rule on something
5 that I have not yet seen. It just--I'll take the same
6 position on that as I have on the affidavit. If you want
7 to submit something, you know, file a copy with the clerk,
8 xerox a copy for me, and I will take a look at it. The
9 only thing I am going to tell you is I will read whatever
10 you submit. I'm not going to pre-judge; I'm not going to
11 make an advisory ruling; I'm not going to pre-rule on some-
12 thing that I have not seen or not heard. So, you know, if
13 you want to submit something on this or on the affidavits,
14 or anything else for that matter, go right ahead.

15 MR. CRAVEN: There's the chronology problem. We
16 probably will have to go to Cincinnati to get his doctor
17 and get the affidavit and get it back. He's going home
18 tonight. Do we offend against the affidavit and bring him
19 back again here on Monday morning and--when we are giving
20 you the affidavit? I don't know why we have to do that,
21 assuming that the affidavit is as strong as I think it can
22 be.

23 THE COURT: Well, you are asking me again to make
24 a judgment and a ruling on something that I have not seen,

1 and I'm not going to do that. Now--I've ruled on your
2 Motion. And by my ruling, we start Court at 9:30 Monday
3 morning.

4 MR. CRAVEN: Well, is the Court going to rule on
5 the voir dire--the request for voir dire? Because we are
6 going ahead--

7 THE COURT: I'm working on both of the Motions
8 that you have submitted to me; and when I feel that I have
9 an Order that properly resolves either and both, I will
10 file them and you'll get copies of it.

11 MR. CRAVEN: Where can we get this affidavit to
12 you tomorrow?

13 THE COURT: What? Of what? His doctor?

14 MR. CRAVEN: Of the doctor.

15 THE COURT: Drop it off at my house if you want.
16 Leave it in the door if I'm not home. I've had a number
17 of--

18 MR. CARR: You are not saying that the Court
19 would rule ex parte on the affidavit without hearing from
20 us?

21 MR. CRAVEN: Rex, I don't do business that way.

22 THE COURT: I'm sorry, I didn't hear what you
23 said.

24 MR. CRAVEN: I said, "Rex, I don't do business

1 that way."

2 THE COURT: You know, you've dropped things off
3 at my house before. If you want to drop off an affidavit--

4 MR. CRAVEN: We won't be able to file it tomor-
5 row, but we will have it ready for filing. We will send a
6 copy to your house and we will send a copy to Counsel if
7 that's agreed.

8 THE COURT: You can do whatever you want.

9 MR. CRAVEN: I'm asking for directions as to--

10 THE COURT: I've allowed--I have a very very
11 liberal policy. If you want to drop something off at my
12 house on any of these Motions for me to read, drop it off
13 and I will read it. And that includes affidavits, I've
14 received responses that way, I've received briefs that way.
15 You know, I'm in the book; drop it off. Shalla knows where
16 I live, so do a couple of the others, so just drop it off.

17

18 (Thus concluding the 5 p.m. in chambers
19 conference on April 4, 1986.)

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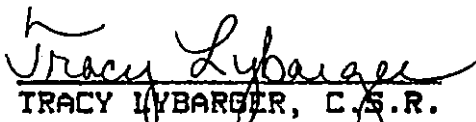
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STATE OF ILLINOIS)
)
COUNTY OF ST. CLAIR)

SS.

I, TRACY LYBARGER, C.S.R., an Official Court Reporter for the Twentieth Judicial Circuit of the State of Illinois, do hereby certify that I reported in shorthand the proceedings had on the hearing in the above-entitled cause; that thereafter I caused the foregoing to be transcribed into typewriting, which I hereby certify to be a true and accurate transcript of the proceedings had before the Honorable Richard P. Goldenhersh, Judge of said Court.

DATED this 7th day of April 1986.


TRACY LYBARGER, C.S.R.

STATE OF ILLINOIS)
)
COUNTY OF ST. CLAIR)

I, RICHARD P. GOLDENHERSH, Circuit Judge in
and for the Twentieth Judicial Circuit, hereby certify
that the above is a true and correct transcript of the
proceedings had in the case captioned: FRANCES E.
KEMNER, ET AL v. MONSANTO COMPANY, Cause No. 80-L-970,
heard on January 10, 1986.

DATED this _____ day of April, 1986.

RICHARD P. GOLDENHERSH, Circuit Judge