

1 THE COURT: We have to break a bit early. We will
2 take a lunch break from now until 1:30. The admonishments
3 that I gave you earlier will apply during this break also.
4 Court is in recess.

5 (Following a recess for the lunch period, these proceedings
6 were had in open court.)

7 Q. (by Mr. Carr) Doctor, referring to Mr. Stover
8 again, your records in 1979 also show on Page 15, does it
9 not, Doctor, that -- are you on Page 15? Also show that he
10 had muscle pains in 1953, nervousness in '53, legs aching in
11 '53, and recurrent infections in '52, isn't that correct,
12 sir?

13 A. Only on this page, sir.

14 Q. Doctor, on Page 17 and 18, we have already gone
15 through, have we not, sir, the checks for the current muscle
16 pain and the check for the muscle weakness and the depression
17 and the nervousness, fatigue, that's on Page 17 and 18?

18 A. We have reviewed that, sir, yes, sir.

19 Q. And on that page the problems are dated from '51,
20 aren't they, sir, on those two pages? You see the date
21 there, Doctor, on Page 18?

22 A. Which symptoms are you referring to, sir?

23 Q. The ones that have the date appended to it relating
24 to the neurological system, it would be on Page 18 where he's

1 got the muscle weakness and he's had it since '51; the
2 depression he's had since '51; the memory poor, or change in
3 memory in '51; the general -- the always tired, general
4 fatigue, '51; the nervousness, '51, as well as currently.
5 You see those dates there, Doctor?

6 A. I do, sir.

7 Q. And, Doctor, on Page 15, they are dated from '53,
8 aren't they, sir, the problems that are similar?

9 A. Which problems are you talking about, sir?

10 Q. The muscle pains, the nervousness, the legs aching,
11 sir?

12 A. According to this report, yes, sir.

13 Q. And, Doctor, the Moses-Selikoff, Exhibit 1776 in
14 which he says he's currently having those problems and that
15 they -- the date they started, he has the year 1952 written
16 in there, hasn't he, sir?

17 A. No, sir.

18 Q. Doctor, would you turn to Page 9573805 of
19 Plaintiff's Exhibit 1776?

20 A. Yes, I have it, sir, I have it before me.

21 Q. And, you see where it says fatigue, weakness,
22 irritability, nervousness, insomnia, on that page, sir?

23 A. Yes, sir. Does this include muscle cramps?

24 Q. Excuse me, Doctor, if you don't mind, the next

1 page, personality change and depression, you see that, sir?

2 A. Yes, I do, sir.

3 Q. And that all those that I've mentioned thus far,
4 sir, are dated to have started in '52 and currently active,
5 aren't they, sir?

6 A. No, sir.

7 Q. Doctor, is weakness dated '52 and currently active?

8 A. Yes, sir.

9 Q. Is weakness dated '52 and currently active? I'm
10 sorry, is fatigue dated '52 and currently active?

11 A. Yes, sir.

12 Q. And weakness is, and irritability and nervousness,
13 all those are dated '52 and currently active?

14 A. That's how it reads here, sir.

15 Q. Insomnia is dated '52 and currently active?

16 A. Yes, sir.

17 Q. The personality change and depression are dated '52
18 and currently active?

19 A. That's how this record reads, sir.

20 Q. And on Page 95738 05 under the musculoskeletal
21 system the muscle cramps in the calves are dated '49 and
22 currently active?

23 A. It was, sir, but that was before he was exposed,
24 sir.

1 Q. Doctor, I don't want to argue with you, sir, would
2 you just mind answering my question?

3 A. Sure, it was '49.

4 Q. On this page dated '49?

5 A. It is dated '49.

6 Q. Muscle cramps and currently active, is it not?

7 A. Says currently active according to this record,
8 sir.

9 Q. And, Doctor, the joint pain is listed there right
10 hip and ankles dating from '53, and there is no statement as
11 to currently active, is there, sir, on that one way or the
12 other, would that --

13 A. That is correct, sir.

14 Q. Now, Doctor, turning to the Moses -- to your study,
15 sir, you have dates for these particular problems in '51, '52
16 and '53, don't you, sir?

17 A. For muscle pains the check off is '53?

18 Q. Yes.

19 A. According to the interviewer, sir.

20 Q. Yes. Nervousness is '53?

21 A. '53, according to the interviewer, sir.

22 Q. Legs ache is in '53, sir? Is that right, sir?

23 A. Um, bone problems, '53, according to this
24 interviewer.

1 Q. Now, Doctor, are you ignoring the words that were
2 written in on that same line, sir, where it says, "legs
3 ache?"

4 A. Right, that's what --

5 Q. Are you ignoring those words?

6 A. No, I'm not ignoring them, sir.

7 Q. That's exactly what I read, legs ache, '53?

8 A. According to the interviewer, sir, yes, sir.

9 Q. And, Doctor, the interviewer is writing down what
10 the patient is saying, is he not, sir?

11 A. I'm not sure, sir.

12 Q. The interviewer, if he's doing his job, is writing
13 down what the patient is saying, is he not, sir?

14 A. I would hope so, sir.

15 Q. Doctor, if you found out that he wasn't writing
16 down what the patient was saying or was changing it, or not
17 reporting it, or reporting something different, you would
18 fire him, wouldn't you, sir?

19 A. No, sir, but I did find so.

20 Q. I'm sorry, Doctor?

21 A. I found out that the story was different, sir.

22 Q. Doctor?

23 A. According to the '79 record.

24 Q. That is not what I'm asking you. What I'm asking

1 you, if you found your interviewer was not writing down what
2 he was told, you would get rid of that interviewer, wouldn't
3 you, sir?

4 A. We wouldn't know at the time, sir.

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

7 THE COURT: Doctor, you've got to respond to the
8 question that was asked of you, not another question. Please
9 listen to the question. I'll have the reporter read it back
10 once.

11 A. Would you repeat the question, please.

12 (Court Reporter read back the previous question.)

13 A. Probably.

14 Q. And, Doctor, so far as you know, what the
15 interviewer wrote down here was what he was told, so far as
16 you know, isn't that correct, sir?

17 A. I have to assume that, sir.

18 Q. Is that a yes to my question, Dr. Suskind?

19 A. Yes.

20 Q. Thank you, Doctor. Now, Doctor, the problems that
21 are related in the Moses-Selikoff report and the problems
22 that are reported to the interviewer by the patient in this
23 exhibit are substantially similar, are they not, sir?

24 A. No, sir.

1 Q. Doctor, don't they both report joint pain or muscle
2 cramps or nervousness, legs aching, don't they both do that,
3 sir?

4 A. Yes, they do.

5 Q. All right, Doctor. Now, Doctor, with regard to the
6 reflex examinations that were conducted in your study, your
7 doctors do not give the grade for activity, do they, sir?

8 A. Where are you looking at, sir?

9 A. Doctor, the entire record, of any of these records
10 that we have gone through, sir, your 1979 records, do the
11 doctors that performed the neurological examinations, do they
12 ever report the grade of activity, sir?

13 A. No, I did the examination, sir.

14 Q. Sir?

15 A. I did the examination, sir.

16 Q. You did the neurological examinations?

17 A. Yes, sir.

18 Q. On all of these people?

19 A. No, on this particular person.

20 Q. Doctor, my question was referring to all the
21 neurological examinations. So far as you know, none of your
22 examiners, whether they were neurologists or dermatologists
23 like yourself, or internists, or whoever they might have been
24 that did the neurological examination, they did not report

1 the grade of activity of these reflexes, did they, sir?

2 A. Some of them did, sir.

3 Q. Who did, Doctor?

4 A. Well, I think where there is a drawing and a plus
5 or minus or 2+ or 3+, that is where the --

6 Q. I understand that, Doctor, but we haven't seen any
7 such drawings thus far, have we, sir?

8 A. I'm not sure, sir. I'm not sure.

9 Q. Do you have any recollection in the ones that we
10 have gone through, these ten survivors, sir, that were seen
11 in '79, was there any grading of any of those that you can
12 recall at this time, sir?

13 A. I believe there was, but I can't tell you which one
14 it was. We'd have to go through all of them to find out,
15 sir.

16 Q. Doctor, if I represent to you that there was just
17 one drawing and there were no pluses or minuses attached to
18 that drawing, you recall the one that I'm talking about,
19 don't you?

20 A. No, I do not. I'd have to review it.

21 Q. No, Doctor, I'd like for you to assume that there
22 was a drawing but there was no pluses or minuses attached to
23 it.

24 A. I will assume it if you ask me to and the Court

1 asks me to.

2 Q. I'm asking you to assume that because that is the
3 evidence. Now, is there any drawing that you can direct our
4 attention to where there was a 1+ or 2+ or where there was a
5 drawing or just described as a 1+ or 2+? Are there any such
6 1979 reports that you can think of at this moment, sir?

7 A. I can't identify them by name, sir, but there were
8 many.

9 Q. There were many?

10 A. Yes, sir. If you look at 436 there were many.

11 Q. Doctor, did you understand what I'm talking about?

12 A. Yes, sir. Yes, I did.

13 Q. Did you understand me I was talking about 436 or
14 talking about the ten, sir?

15 A. Well --

16 MR. HEINEMAN: Objection, he said all.

17 Q. Did you understand what I was talking about.

18 THE COURT: Well, wait a second, gentlemen, why
19 don't you rephrase the question to clarify.

20 Q. (by Mr. Carr) Doctor, of the ten that we have
21 looked at here, the survivors that were reexamined in 1979,
22 you understand these are the -- on these ten people, these
23 are the only '79 records we have looked at, you do recall
24 that, don't you, sir?

1 A. I believe those are those that we have recently
2 reviewed, sir, yes.

3 Q. And of those -- Doctor, they are the only ones we
4 have looked at. I've only tried to trace the survivors of
5 the 36 from '53. Do you recall that, sir? We have looked at
6 only the survivors. You recall that, sir?

7 A. Yes.

8 Q. These ten, sir.

9 MR. HEINEMAN: Objection. May counsel approach the
10 bench?

11 THE COURT: Sure.

12 (The following Side Bar conversation was had outside the
13 hearing of the jury.)

14 MR. HEINEMAN: Mr. Carr keeps referring to these
15 ten or eleven as the survivors. My recollection is that
16 there is a number of them that are not accounted for and he
17 doesn't know whether they have survived to this date or not,
18 and that question is misleading, because it indicates that
19 all the others are dead, and that simply isn't true.

20 MR. CARR: Let me make it clear because I agree
21 with counsel.

22 THE COURT: Fine.

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

24 Q. (by Mr. Carr) Doctor, these survivors of the --

1 are the ones that we know of, you recall we have established
2 earlier we don't know what happened to the others, recall we
3 have established that 16 were dead. I don't know that I've
4 got an exhibit on it at this point in time, we have got these
5 ten that we looked at and there were ten others who were
6 unaccounted for. Do you recall that, sir?

7 A. No, I do not.

8 Q. You don't recall that?

9 A. No.

10 Q. Doctor, I'd like for you to assume that's the state
11 of the record, that we looked through 16 -- death
12 certificates of the 16. You do recall that, don't you, sir?
13 Don't you, sir?

14 A. I don't have the exhibit here, sir.

15 Q. Doctor, do you recall it?

16 A. Yes, I believe we did.

17 Q. Yes. And at that time these were the ones that we
18 knew were dead and we agreed, you and I, that there are ten
19 others that may be alive or may be dead. We can't account
20 for them, but that they were not seen in 1979. Do you recall
21 that, sir?

22 A. I don't recall that because I have no knowledge of
23 what happened to them. All that I know, sir --

24 Q. Doctor --

1 A. All that I know you've given me this list.

2 Q. What I'm asking you, sir, is that you don't have
3 knowledge of these other ten, do you, sir?

4 A. The ten who were examined in '53, sir?

5 Q. The other ten that we have not accounted for. You
6 don't know whether they are dead or alive. What you do know
7 is that they weren't examined in '79, isn't that correct?

8 A. Correct, sir.

9 Q. All right. Now, Doctor, of these ten survivors
10 that we have, that you did examine in '79, now, are you with
11 me, sir? Of these ten, were any of these ten -- did they
12 have any of their neurological reflexes graded by activity in
13 the reports, sir?

14 A. As I indicated, I'm not sure. I recall that there
15 was at least one diagram, but I'm not altogether sure about
16 the others.

17 Q. Doctor, would you like to look at them again?

18 A. Well, if you would like me to.

19 Q. No, so that you could be sure that there wasn't any
20 grading by your doctors of any reflexes on these ten?

21 A. What do you mean by grading, sir?

22 Q. Doctor, what do you think I mean when I say grading
23 by activity?

24 A. Well, I would think that there are at least two

1 views of grading. One would be the one you presented with me
2 this morning. The other is an interpretation of the normal
3 or abnormal or absent reflexes, which is what we have done.

4 Q. Now, Doctor, I didn't ask you to interpret the
5 grading?

6 A. That is grading, too.

7 Q. Doctor, I asked you -- you know when I say grading
8 by activity, you know that I mean 1+ or 2+ or 3+ or 4+, don't
9 you, sir?

10 A. No, I don't, sir.

11 Q. You don't?

12 A. No.

13 Q. When a neurologist says graded this man's
14 reflection at 1+, you would know he was grading activity?

15 A. That would be one way of doing it.

16 Q. You would know he's grading activity?

17 A. Yes.

18 Q. If I use the word 1+ or 2+, you'd know I was
19 talking about activity grade as well?

20 A. That would be one way of grading.

21 Q. Now, Doctor, of these ten, do you want to look
22 through the record to be assured that I'm not misinterpreting
23 the record or not twisting the records or not putting
24 something that's there when I say to you, sir, that there is

1 no grading of activity by using numbers, 2+ or 1+ or anything
2 like that? What there is in your records, Doctor, is it says
3 normal. There is no grading of activities. Do you accept
4 that, sir?

5 A. I think that when I did the examination, that's how
6 I did it, sir.

7 Q. You didn't put down so that somebody at a later
8 point in time could determine whether or not that activity
9 was in fact normal under the circumstances, isn't that
10 correct, sir?

11 A. Yes, we did.

12 Q. Doctor, did you put down whether it was a 1+ or a
13 2+ or 3+ or 4+?

14 A. No, sir, I didn't.

15 Q. All you put down was that it was normal?

16 A. No, sir. If you read Mr. Stover, you'll see it
17 reads no abnormal neurological findings, deep reflexes
18 normal, no abnormal -- no abnormal reflexes.

19 Q. Doctor --

20 A. Normal responses to sensory modalities. That's a
21 physician's judgment.

22 Q. I understand that.

23 A. It's very adequate.

24 Q. Doctor, you have said a 1+ reflex is normal, have

1 you not, sir?

2 A. I have for some people.

3 Q. Doctor you have said a 4+ reflex is normal, have
4 you not?

5 A. It could be for some people.

6 Q. And, Doctor, you've said a 2+ is normal, haven't
7 you, sir?

8 A. Yes.

9 Q. You said everything from 0 to 4+ is normal, haven't
10 you?

11 A. No, sir, I did not, sir. I did not say 0 was
12 normal, sir.

13 Q. You said 0 is not normal, is that correct?

14 A. Absent reflexes is not normal, sir.

15 Q. But anything else is normal, is that correct?

16 A. It could be, sir.

17 Q. Is that your judgment?

18 A. It is my judgment.

19 Q. All right. Now, Doctor, we don't know then because
20 anything from 1+ to 4+ could be normal. When you write down
21 deep reflexes normal, in fact the ankle reflex could be a 1+,
22 couldn't it, sir?

23 A. Ankle reflex could be a 1+.

24 Q. And we wouldn't know, would we?

1 A. But that would be normal for that person.

2 Q. Excuse me, Doctor, we would not know that that

3 ankle reflex was 1+, what you wrote down here, would we?

4 A. We won't know that.

5 Q. Could be a 4+?

6 A. Could be a 3+, too.

7 Q. Excuse me. Could be a 4+?

8 A. Could be.

9 Q. Could be any of these things and we have no way of

10 knowing from your record which they are?

11 A. Yes.

12 Q. Do we, sir? Isn't that right, sir?

13 A. No, it's not right.

14 Q. Doctor, can you tell by looking at Stover's

15 examination record here whether or not his ankle reflexes

16 were 1+ or 2+?

17 A. No, you cannot.

18 Q. So can you tell whether or not they are 1+ or 4+?

19 A. If it were 4+, I would have regarded that as

20 hyperactive, sir, and I would have put it down.

21 Q. You just got through telling us anything from 1+ to

22 4+ could be considered normal?

23 A. It could be, but in this instance, I would have

24 considered it hyperactive.

1 Q. Would you consider it hyperactive in all instances,
2 sir?

3 A. No, not necessarily.

4 Q. Doctor, in what circumstances would a 4+ not be
5 hyperactive?

6 A. It would really depend upon the state of the
7 person.

8 Q. Doctor, that's what I'm asking, under what
9 circumstances could it be that a 4+ would not be hyperactive?

10 A. Somebody who might be nervous, and might be
11 jittery, and might actually react in that fashion because he
12 knows that the doctor expects a reaction.

13 Q. Now, Doctor, the reflexes are an objective sign,
14 aren't they, sir?

15 A. They are supposed to be, yes.

16 Q. They have been reported to us and by you and by
17 every other doctor as an objective sign?

18 A. Yes, they are, largely, sir, largely.

19 Q. Doctor, what you are now saying, sir, is that if
20 the patient thinks you expect a hyperactive reflex, he can
21 give it to you? Is that what you are saying?

22 A. He might, certainly.

23 Q. So now you are saying that they are not objective?

24 A. No, in most instances they are.

1 Q. Doctor, if it can be subjective or controlled in
2 some instances, then it is not an objective finding, is it,
3 sir?

4 A. It might not be completely, sir, yes.

5 Q. What you are saying, the reflex changes, the reflex
6 tests are not objective tests?

7 A. Yes, they are, mostly.

8 Q. Doctor --

9 A. Largely.

10 Q. Doctor, it is either objective or it's not?

11 A. That's not so, sir.

12 Q. If I can control my reflexes, that makes it
13 subjective, doesn't it, sir?

14 A. You don't control your reflexes, you actually
15 perform. One can perform and --

16 Q. My question is if I can control my reflexes, that
17 is subjective, isn't it, sir?

18 A. The actual performance can be controlled, but if
19 it's a true reflex, if it's a true reflex, it's objective,
20 but you may get a mixture, sir.

21 Q. Would you answer my question, Dr. Suskind?

22 A. I thought I did.

23 MR. CARR: Read my question.

24 (Court Reporter read the previous question.)

1 A. No.

2 Q. Doctor, isn't subjective by definition that which
3 one can control?

4 A. No.

5 Q. This isn't the definition that we have established
6 here, Doctor, time and again?

7 A. I don't think we have established it, sir.

8 Q. You don't think we have established that, sir?

9 A. No.

10 Q. Don't you recall we went through considerable
11 examination on that point, that subjective is something that
12 one can control?

13 A. No.

14 Q. You don't recall that either?

15 A. A complaint --

16 Q. Excuse me, you don't recall that?

17 A. No, I do not recall that.

18 Q. Doctor, I'd like for you to assume that you have
19 previously testified that a subjective complaint is one that
20 is within the person's control or objective finding is one
21 that is within a person's control. Would you assume that,
22 please, sir?

23 MR. HEINEMAN: You have a citation?

24 A. Are you asking me to assume that? Are you asking

1 me to assume what, sir?

2 Q. That you have defined subjective finding,
3 subjective complaints?

4 A. That you have define it. I haven't.

5 Q. That those are within a person's control?

6 A. You are asking me to assume that you have defined.

7 Q. Yes -- no, that you have defined it, Doctor.

8 MR. HEINEMAN: Your Honor, may counsel approach the
9 bench?

10 Q. Please define subjective complaint for us.

11 THE COURT: Gentlemen, you may approach the bench.

12 (The following Side Bar conversation was had outside the
13 hearing of the jury.)

14 THE COURT: You did ask to approach the bench?

15 MR. HEINEMAN: Yes, I did ask to approach the bench
16 in order to object to his asking the witness to assume that
17 he had defined subjective in a particular way. I asked for a
18 citation to that because I don't think it occurred. I don't
19 remember it occurring that way, and therefore I'm objecting
20 to it. If Mr. Cars has a citation to that, that's fine. If
21 he wants this witness to define subjective for him now,
22 that's fine, too. But, I don't think it's fair to ask this
23 witness to assume that he has made some kind of testimony
24 that isn't cited.

1 THE COURT: If I remember correctly, I think he
2 agreed with or came to that conclusion, I don't remember
3 which, early last week in the course of his testimony. It
4 wasn't Wednesday or anything, but earlier last week or late
5 the week before. I think that he either had that definition
6 or agreed ultimately with that definition. Is that your
7 recollection?

8 MR. CARR: Yes, Your Honor, that is indeed.

9 THE COURT: I can't tell you the exact day, but I
10 know it's in some record. There is a sufficient basis as far
11 as I'm concerned for him to make, ask him to make that
12 assumption. Your objection is overruled.

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

14 Q. (by Mr. Carr) Doctor, will you please define
15 subjective findings for us, sir?

16 A. Subjective symptoms can be defined as complaints
17 which are offered by the patient being interviewed in
18 response to questions about specific problems, or are offered
19 by -- offered by the patient.

20 Q. Now, Doctor, are those things that he offers within
21 his control?

22 A. No, not necessarily.

23 Q. Doctor, if he is the one stating them to you, does
24 he not have control of what he states to you, sir?

1 A. He has control of what he states, sir.

2 Q. That's what I asked you.

3 A. No, I thought you said does he have control over

4 the complaints and his symptoms and my answer to that --

5 Q. No, Doctor, we are talking about subjective signs.

6 A. I am.

7 Q. Subjective symptoms, and you've defined it as that

8 which the patient tells you, sir.

9 A. Correct.

10 Q. Now, Doctor, doesn't he have control over what he

11 tells you, sir?

12 A. He has control over what he tells me, but not over

13 the symptoms or the --

14 MR. CARR: Your Honor, would you direct the witness

15 to not mix the symptoms in here, because symptoms would

16 include objective symptoms as well as subjective symptoms.

17 A. Correct. Correct.

18 THE COURT: Please listen to the question and

19 respond to the question only, not more than the question.

20 A. Yes, sir.

21 THE COURT: Thank you. Appreciate it.

22 Q. Doctor, subjective symptoms is that which the

23 patient tells you, isn't that correct, sir, as you have

24 defined it here today?

1 A. Correct.

2 Q. And, Doctor, if it is that which the patient tells
3 you, he has control over that which he tells you, does he
4 not, sir?

5 A. That is correct, sir.

6 Q. Therefore, a subjective symptom is one over which
7 he has control, isn't that correct, sir?

8 A. No.

9 Q. Doctor, do you not agree that he has absolute 100
10 percent control over what he tells you?

11 A. I don't believe I can say it's absolute, but he
12 does have control over what he tells me.

13 Q. Doctor, he has absolute control. He's the one that
14 opens his mouth and makes the words, makes the sounds, isn't
15 that right?

16 A. That is true, sir. That is true.

17 Q. He has absolute control over what he tells you?

18 A. He has control.

19 Q. Absolute control, isn't it, sir?

20 A. As a physician, I can't say yes, sir.

21 Q. Doctor, you know that he's the one to decide
22 whether he does or does not say this hurts or this does not
23 hurt, don't you, sir?

24 A. Yes, but --

1 Q. Doctor, that he has -- you can't make him say that,
2 can you, sir?

3 A. No.

4 Q. He has control over it, doesn't he, sir?

5 A. What he says, but not what he has, sir.

6 Q. Excuse me, I'm not asking you that, I'm asking you
7 whether or not he has absolute control over what he says to
8 you.

9 A. No, sir.

10 Q. Do you make him say something, sir?

11 A. No, sir.

12 Q. Does he say it voluntarily?

13 A. He says it because he believes it, but it may be
14 imagined, too, sir.

15 Q. Surely, Doctor, that's a subjective complaint, if
16 he tells you he's hurting?

17 A. That's a subjective complaint, but it may not be
18 absolutely true, sir.

19 Q. Doctor, it's a subjective symptom?

20 A. That's a subjective symptom.

21 Q. He has absolute control of whether or not he tells
22 you he has this pain or not, doesn't he, sir?

23 A. Not really, no.

24 Q. Not absolute? Doctor, can somebody make him say

1 it?

2 A. No.

3 Q. Doctor, can somebody keep him from saying it?

4 A. Somebody might. Might try.

5 Q. Doctor, they can't, though, unless you physically

6 gag him, isn't that right, sir?

7 A. No.

8 Q. Isn't that right, sir?

9 A. No.

10 Q. That isn't right?

11 A. No.

12 Q. Doctor, are you now saying that the patient doesn't

13 have the power to say what he wants to say one way or the

14 other, that's not within his control?

15 A. No, sir.

16 Q. You are not saying that, are you?

17 A. No, because two interviewers may get two different

18 answers.

19 Q. Doctor, I'm not talking about that, I'm talking

20 about what is a subjective symptom, aren't we, sir?

21 A. Yes, we are.

22 Q. And a subjective symptom is that which is within

23 the control of the patient, isn't it, sir?

24 A. That which he says is in control.

1 Q. Doctor, are we saying the same thing?

2 A. I think we probably are not.

3 Q. Doctor, is a subjective -- is what the patient says
4 within his control?

5 A. I think I've already answered that and I --

6 Q. You said yes it is within his control, haven't you,
7 sir?

8 A. To a degree it is, yes.

9 Q. Doctor, it is a hundred percent, isn't it? If I'm
10 your patient and I come in and tell you that I've got pain,
11 I'm telling you something that is within my control to either
12 decide to tell you or not to tell you, isn't it, sir?

13 A. The decision to say it may be in his control, in
14 your control.

15 Q. It is in his control, isn't it, sir?

16 A. No, sir.

17 Q. No question about it?

18 A. There is a question in my mind.

19 Q. Whether or not he has the absolute control over his
20 mouth? Unless you are going to give him some kind of drug or
21 hypnotize him or something of that sort?

22 A. No, no, no, that's not so, sir.

23 Q. Then what you are saying is that the subjective
24 sign is something that is not within his control?

1 A. Not altogether, sir.

2 Q. Is it or is it not, sir, what he tells you within
3 his control?

4 A. Well, I say not altogether.

5 Q. How is it not within his control when he tells you?

6 A. He may respond differently to different
7 interviewers.

8 Q. Sure he may, as he --

9 A. As Mr. Stover has in this case.

10 Q. But he is the one making the response, isn't he,
11 sir?

12 A. He is indeed.

13 Q. He's the one deciding whether to say it or not,
14 isn't he?

15 A. Yes.

16 Q. That is absolutely within his control?

17 A. It might be within his control but he responds
18 differently to different interviewers.

19 Q. I'm not asking you about that.

20 A. As in this case, sir.

21 Q. Doctor, I'm not asking you about that, am I, sir?

22 A. Well, I thought you were.

23 Q. No, Doctor, you know I asked this series of
24 questions asking you whether or not subjective symptoms are

1 those things which are within the patient's control, now you
2 know that's exactly how we started, we started out
3 hypothetically because you would not agree with this man as
4 to whether or not a reflex was or was not within his control,
5 you do recall that, don't you, Dr. Suskind?

6 A. I recall discussing that in some degree, sir.

7 Q. Now, Doctor, are you now telling us, sir, that the
8 reflex that he has is within his control, sir?

9 A. I am not saying that in this instance.

10 Q. It is not within his control, is it, sir?

11 A. It could be, sir.

12 Q. Under what circumstances could it be within his
13 control, sir?

14 A. If he would hyperreact or stiffen up his leg so
15 that he wouldn't respond normally or respond adequately.
16 There are any number of ways for a patient to control
17 reflexes.

18 Q. Oh, but the doctor can tell those ways, can't he?

19 A. Yes, he might or he might not.

20 Q. Doctor, the neurologists that performed these tests
21 have the skill to determine whether or not the man is
22 stiffening his leg, don't they, sir?

23 A. He might, yes.

24 Q. Doctor, is there any question about that?

1 A. No, there is no question about it in my mind. In
2 this case there is no question.

3 Q. I'm not talking about this case, I'm talking about
4 neurologists have the ability to determine whether or not the
5 patient is stiffening his reflexes, don't they, sir?

6 A. Yes, they usually do.

7 Q. And, Doctor, they also have the ability to tell
8 whether he's exaggerating a reflex, don't they?

9 A. Not all the time.

10 Q. Doctor, don't they have that skill?

11 A. Doctor they should, but they may not.

12 Q. Doctor, with regard to this particular man, we have
13 no way of knowing whether or not your definition of normal
14 reflex is a hyperactive reflex or is a sluggish reflex, do
15 we, sir?

16 A. Yes, we do, it's my interpretation.

17 Q. Where -- when I come back and read this record,
18 sir, six years after you made it, or seven years after you
19 made it, how can I read this record where it says deep
20 reflexes normal, what is there that tells me the grade of
21 activity in Mr. Stover's reflexes?

22 A. The grade is not given but in my judgment, sir, and
23 neurologists --

24 Q. I understand that, but you understand I'm asking

1 you what is there to tell me about the grade of the reflexes,
2 of activity of this man's reflexes?

3 A. If you will allow me to finish my answer, I will
4 provide you with that answer.

5 Q. You finished your answer on a number of occasions,
6 what I'm asking you is there anything in this phrase "no
7 abnormal reflexes" that tells me whether or not his were
8 sluggish, or active, or hyperactive, or normal, or active,
9 period?

10 A. Yes, sir.

11 Q. What is there in there to tell me?

12 A. There is the interpretation by the examining
13 physician that these reflexes were normal.

14 Q. But Doctor, you've told us that you consider a 1+
15 reflex as normal?

16 A. It could very well be.

17 Q. So he could have 1+ reflexes, couldn't he, sir?

18 A. And it might not be sluggish, sir.

19 Q. He could have 1+ or sluggish reflexes?

20 A. No, sluggish reflexes would not necessarily be 1+.
21 We went through that this morning, sir.

22 Q. Excuse me, Doctor, 1+ is less than active, isn't
23 it, sir?

24 A. No, it's not, it's active. It's a definite reflex,

1 a +- might be questionable sir, but a --

2 Q. Doctor --

3 A. May I finish?

4 Q. Doctor, we are talking about the grade of reflex,
5 do you understand that?

6 MR. HEINEMAN: Objection, Your Honor, he
7 interrupted the answer again.

8 THE COURT: Objection is overruled.

9 Q. Do you understand, Dr. Suskind, we are talking
10 about the grade of reflexes, not whether it is there or not,
11 we are talking about the grade of its activity being present,
12 do you understand that, Dr. Suskind?

13 A. I do indeed, sir.

14 Q. Now, Doctor, can we tell by looking at your note
15 with regard to Mr. Stover, whether or not he has 1+ reflexes?

16 A. No, you cannot, sir.

17 Q. Can we tell whether or not he's got 2+ reflexes?

18 A. No, you cannot.

19 Q. Can we tell whether or not he's got 3+ reflexes?

20 A. No, you cannot.

21 Q. So his reflexes by looking at this record could be
22 1+, 2+, or 3+, could they not?

23 A. It could be, sir, and that would be normal, sir.

24 MR. CARR: Your Honor, would you ask the jury to

1 disregard the last statement that the doctor made?

2 THE COURT: Jury is so ordered, it was not
3 responsive to the question. Jury is ordered to disregard the
4 last statement.

5 Q. Now, Doctor, if you look at Dr. Nestmann's report,
6 or if you look at Dr. Moses and Selikoff's report, you can
7 tell from their report, can you not, sir, whether they are
8 1+, 2+, or 3+, can't you, sir, 1775, Dr. Suskind?

9 A. I have the Nestmann report, but I'm looking for the
10 Selikoff report, sir, and if you'll be patient, I'll try to
11 find it. If you can direct me to it.

12 Q. Yes, it's got the tab number 7 on the page, 1776.
13 The page number 9573852 if the tab has been lost, sir?

14 A. I see it, sir.

15 Q. And you can tell from the Moses-Selikoff study
16 whether or not it's one, two, three, or four, can't you, sir?

17 A. Uh-huh.

18 Q. And you can tell from the Nestmann report whether
19 it's 1, 2, 3, or 4, can't you, sir?

20 A. You can indeed.

21 Q. Now, the ankle for the Nestmann report is rated 1+,
22 is it not, sir, for activity?

23 A. The ankle jerks?

24 Q. Yes.

1 A. Is rated 1+ on the right, and 1+ on the left, sir.

2 Q. Isn't that correct, sir?

3 A. That's true, sir.

4 Q. And that's in 1955, 1+ on the right and left,
5 correct, sir?

6 A. Yes, sir.

7 Q. And, in 1979, the Moses-Selikoff report for the
8 right and left ankle, is one, isn't it, sir?

9 A. Yes, sir.

10 Q. And 1 in Moses-Selikoff, according to their scale
11 means it's absent?

12 A. That's quite true.

13 Q. Now, can a person fake an absent ankle jerk?

14 A. I don't know.

15 Q. Doctor, you conducted the neurological examination
16 of Mr. Stover, can a person fake an absent ankle jerk? Are
17 you competent as a physician to tell us, sir, when you
18 perform these neurological examinations whether or not a
19 person could fake an absent ankle jerk?

20 A. I would feel that it's probably not likely.

21 Q. Doctor, Moses-Selikoff examined the same man just
22 three -- let's see, you saw him in June or July, April, just
23 three months before you saw him, didn't you?

24 A. That's right, sir.

1 Q. And when they saw him the ankle jerk was absent,
2 wasn't it, sir?

3 A. That's correct. That's what they record, sir.
4 Now, whether it's actually -- how many times they did it, I
5 don't know.

6 Q. That's what they reported, isn't it?

7 A. That's true, sir.

8 Q. But you a few months later reported that no -- you
9 reported all deep reflexes normal, didn't you, sir?

10 A. Correct, sir.

11 Q. Now, Doctor, a 1+ reflex in 1955, according to the
12 Monsanto physician, is what this man had, right, sir?

13 A. Monsanto physician, I'm not sure I understand.

14 Q. Dr. Nestmann, sir?

15 A. If you are referring to Dr. Nestmann's report, I
16 have it right here, sir, yes.

17 Q. He is a Monsanto physician, isn't he, he examined
18 he -- not on a payroll as an employee, but he examined these
19 people for Monsanto, did he not, sir?

20 A. Is that what it says?

21 Q. Yes. He has examined for us, is what it says,
22 sir.

23 A. Okay.

24 Q. Doctor, he found these reflexes in the ankle to be

1 1+, didn't he, sir?

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

3 Q. And, Moses-Selikoff found it to be 1 also in the
4 ankles, correct, sir?

5 A. That would be absent, sir, their 1 means absent.

6 Q. I understand that, but his 1+ could also mean
7 absent as well, we don't have the scale, do we, sir?

8 A. No, sir, a 1+ is not absent according to Nestmann,
9 a 0 would be absent.

10 Q. Do you have a scale for him that we know that, sir?

11 A. No, but I recognize what he is doing, sir, and it's
12 the same grading that I would be using, and 1+ means it's
13 there, sir.

14 Q. It would be there, but it would fall then within
15 the -- if you grade them as, absent, sluggish, active, and
16 very active, on a scale there, it would be considered
17 sluggish, sir, is that correct?

18 A. I'm not sure what this means, sir --

19 Q. Excuse me, if you used that grade, are you assuming
20 that that is the grade, sir?

21 A. Their grading.

22 Q. Zero is absent.

23 Q. And the next one would be sluggish. Are you
24 assuming that, 1 would be sluggish?

1 A. That would be in my view a +-, sir.

2 Q. Doctor, please listen to my question. They have a
3 scale here and did you -- they have a scale here of 1, 2, 3,
4 4, do they not, in the Moses-Selikoff?

5 A. I believe if you are referring to Page 9573852,
6 yes, sir, that's it.

7 Q. And the Nestmann report from what you know is 0, 1,
8 2, 3, 4, is that correct, sir?

9 A. I would assume that, sir.

10 Q. 0 is absent and 1 then would be the next one
11 directly above, wouldn't it, sir?

12 A. Well, there would be a +- which would be sluggish.

13 Q. Doctor, did you see any of his reports where he
14 used a +-, sir?

15 A. I haven't seen Nestmann's report except this one,
16 sir, but neurologists usually do it that way.

17 Q. Doctor, my question is have you seen any reports in
18 here where he uses +-, sir?

19 A. This is the only report I've seen, sir.

20 Q. And, Doctor, he doesn't use that here, does he?

21 A. No, he doesn't.

22 Q. He's got a 1+, hasn't he?

23 A. Correct.

24 Q. And it's a scale of 0, 1, 2, 3, 4, that would be

1 the one right above absent?

2 A. No, sir, +- would be before absent.

3 Q. Doctor, I just asked you to assume that the scale
4 was 0, 1, 2, 3, 4, didn't I?

5 A. No, sir, I didn't hear you say that.

6 Q. Assume then --

7 A. Please repeat that. What do you want me to
8 assume?

9 Q. That the scale is 0, 1, 2, 3, 4. That Nestmann's
10 scale is 0, 1, 2, 3, 4.

11 A. I am to assume that Nestmann's scale is 1, 2, 3,
12 4?

13 Q. Yes.

14 A. I'm assuming that, sir.

15 Q. And the one is right above the absent?

16 A. You want me to assume that.

17 Q. On the scale that I gave you, Dr. Suskind, of 0, 1,
18 2, 3, 4, what is right above the 0?

19 A. 1+ would be, according to your assumption, 1+ would
20 be above 0.

21 Q. And on -- using the scale that -- using the words
22 in Dr. Moses-Selikoff -- Moses-Selikoff said one equals
23 absent, doesn't it, sir?

24 A. Yes.

1 chloracne?

2 A. Is there any place on that page, sir, where it
3 discusses any health problems of these people or is there
4 simply on this page and throughout the documents, sir,
5 comparison of findings of people with chloracne and these
6 people without chloracne?

7 A. Well, over 60 percent of these people had chloracne
8 and they were all exposed.

9 THE COURT: Doctor -- Doctor, wait for the
10 question.

11 A. Yes, sir.

12 THE COURT: Respond to that.

13 A. They were all --

14 THE COURT: Doctor, Doctor --

15 A. I thought he asked me a question.

16 THE COURT: I think he was trying to get in a
17 question. Redirect to you to a question that had been asked
18 before.

19 A. Please, Mr. Carr.

20 Q. All of these workers were exposed, were they not?
21 Isn't that what you said?

22 A. They were exposed to something, that's why we were
23 there.

24 Q. Yes. They were exposed to something, aren't they,

1 sir?

2 A. Right.

3 Q. Some of these people had chloracne that were
4 exposed to the chemicals in the plant, and some of the people
5 exposed to the chemicals of that plant did not have
6 chloracne, isn't that correct?

7 A. That's true.

8 Q. And that was something that was known before you
9 went to the Krummrich plant, was it not, sir?

10 A. I think they probably knew of its existence but
11 there was no attempt to --

12 Q. Doctor, my question --

13 A. May I finish?

14 Q. It was known that some people had chloracne working
15 at the plant and others did not, isn't that correct, sir?

16 MR. HEINEMAN: Objection. Interrupted the answer.

17 THE COURT: Objection is overruled. Going into a
18 non-responsive answer.

19 A. That's true.

20 Q. All right. Now, Doctor, what you've done then is
21 compare people exposed to the chemicals who have chloracne,
22 to people who were exposed to the chemicals who did not get
23 chloracne in this study, isn't that correct, sir?

24 A. These were the only people we had, sir.

1 Q. Excuse me, sir, isn't that correct, sir?

2 A. I said these are the only people we had, sir.

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

5 THE COURT: Doctor, that was not responsive to the
6 question. I will have the Court Reporter read back the
7 question. Please answer the question that was asked of you
8 and not something else.

9 COURT REPORTER: "Now, Doctor, what you've done
10 then is compare people exposed to the chemicals who have
11 chloracne, to people who were exposed to the chemicals who
12 did not get chloracne in this study, isn't that correct,
13 sir?"

14 A. That was certainly so, sir.

15 Q. What you did, Doctor, was compare exposed workers
16 to exposed workers, did you not, sir?

17 A. That was the purpose of the study.

18 Q. Would you answer that question, sir?

19 A. We did.

20 Q. Yes. Now, Doctor, where in this document is there
21 any reference to the health status of the people who were
22 exposed to the chemicals who did not get chloracne or who
23 were exposed to the chemicals and that did get chloracne?
24 Where is there any single mention of their health status,

1 Doctor?

2 A. In the -- in this report, which is a preliminary
3 report, sir. We have in the laboratory area, we provide
4 comparisons with respect to lipids, sir.

5 Q. Doctor, you are comparing the lipid values in
6 people with chloracne to lipid values in people without
7 chloracne?

8 A. That's true, sir, that's what you asked me.

9 Q. No, Doctor, my question is, sir, where did you
10 report as to their health status, sir?

11 A. That was one of the -- one of the health status
12 parameters which we discuss in this report.

13 Q. Where does it say?

14 A. That's why it's a preliminary report, sir, because
15 it's not complete.

16 Q. Doctor, where is the mention of the health status
17 of any of those people in this report? You say in this
18 report that some people with chloracne had elevated HDL's and
19 that you found people who didn't have chloracne had elevated
20 HDL's, isn't that correct, sir?

21 A. Some.

22 Q. Isn't that correct, sir?

23 A. Some, yeah.

24 Q. What you did was compare abnormals to abnormals?

1 A. No, we did not, sir.

2 Q. Oh, Doctor, where in there -- where in there is a
3 statement, sir, as to the health, as to whether or not this
4 particular abnormality affected the health of the worker?

5 A. What abnormality? Exposure? That's not an
6 abnormality.

7 Q. Doctor, the abnormality in the lipid levels that
8 you found, sir --

9 A. Are you saying you didn't find abnormalities in
10 their lipid levels?

11 A. We have a rundown of -- in this --

12 Q. Could you answer my question, sir?

13 A. I am answering your question. If you'll not
14 interrupt me, I will finish. If you turn to Table 16, you
15 will find a report of the triglycerides, normal or high, with
16 respect to mild or moderate chloracne.

17 Q. Yes, Doctor but --

18 A. On Table 17 people with no history of chloracne as
19 compared with history of chloracne, comparing their serum
20 cholesterols, whether they were normal or high, and we do the
21 same thing for the residual as compared with these that
22 didn't have residual chloracne, and the same thing is done
23 for the HDL's and the same thing is done for the VLDL's.

24 Q. Doctor, both of these pages refer to comparisons of

1 people who had chloracne?

2 A. Or didn't have chloracne.

3 Q. People who did not have chloracne?

4 A. That's right.

5 Q. It doesn't tell us a thing of whether or not these
6 people are sick, does it, sir?

7 A. Mr. Carr --

8 Q. Excuse me, Doctor?

9 A. None of them were sick.

10 Q. My question is, Doctor, doesn't tell us a thing
11 whether or not they were sick?

12 A. I said none of them were sick, sir.

13 Q. Would you answer my question, sir?

14 A. These are the parameters we examined and these are
15 the parameters that were presented in this preliminary
16 report.

17 Q. Could you answer my question?

18 A. I have already answered it, and that is that.

19 THE COURT: Doctor, your answer was not responsive
20 to the question, does not answer it. Listen to the question
21 again and answer the question that's asked of you, sir, and
22 not anything else. Would you read the question.

23 COURT REPORTER: "My question is, Doctor, doesn't
24 tell us a thing whether or not they were sick?"

1 Q. Isn't that correct, sir?

2 A. It doesn't report illness. Well, I'll tell you why
3 none of them were sick.

4 Q. I'm not asking you why.

5 A. None of them were sick, sir.

6 Q. Doctor, it doesn't mention the health status
7 whether they are sick or whether they are healthy, or of a
8 single person or group of people, does it, sir?

9 A. In this preliminary report?

10 Q. Yes, Doctor.

11 A. It does not.

12 Q. And does it make any mention in your summary
13 analysis, sir, 1711, whether anybody was healthy or not
14 healthy?

15 A. It only says what we found, sir.

16 Q. Could you answer my question, sir?

17 A. I don't know how to answer your question, sir.

18 THE COURT: Doctor, that's clearly put questioning,
19 I'm ordering you to answer it.

20 A. Would you read it?

21 THE COURT: You've got the summary in front of you,
22 look at it and answer the question.

23 MR. HEINEMAN: Excuse me, Your Honor, may counsel
24 approach the bench?

1 THE COURT: Yes, you may.

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

4 MR. HEINEMAN: Your Honor, will you give me a
5 continuing objection to each time that you interpose an
6 instruction to this witness without being requested to do so,
7 by counsel --

8 THE COURT: Sure.

9 MR. HEINEMAN: -- Mr. Carr, so that I don't have to
10 interrupt each time?

11 THE COURT: Sure.

12 MR. HEINEMAN: To preserve my record. So that
13 you'll give me a continuing objection that we will have a
14 record made on it, because I do object to your instruction of
15 the witness.

16 THE COURT: Fine. Fine. Sure.

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

18 Q. (by Mr. Carr) I'm waiting for your answer to the
19 question.

20 A. Repeat the question.

21 COURT REPORTER: "And does it make any mention in
22 your summary analysis, sir, 1711, whether anybody was healthy
23 or not healthy?"

24 A. The best way I can answer that, sir, is that this

1 represents the health status and the abnormal findings, the
2 abnormal findings in that group, sir.

3 Q. Would you answer my question, Doctor?

4 A. I have answered it, sir.

5 Q. My question to you, Doctor, is does it make any
6 mention of the health status or unhealth status of anybody
7 there other than the fact that they got a history of
8 chloracne?

9 A. I believe so, sir.

10 Q. And where does it tell their health status, sir?

11 A. Okay, on the front Page of 1711, other clinical
12 findings, clinical actinic elastosis 12 percent, cancer of
13 the skin one percent, acne vulgaris history of 42 percent by
14 examination, 20 percent.

15 Q. And, Doctor --

16 A. And then the comparison.

17 Q. Doctor, what you referred to here is your chloracne
18 or skin problems, have you not, sir?

19 A. Okay, let's go onto the --

20 Q. Isn't that correct, sir?

21 A. Let's go onto the second page.

22 Q. Excuse me, isn't that correct, sir?

23 A. No. No, it does not. These are -- these
24 particular ones happen to refer to the skin, sure. But on

1 Page 2 there are other abnormal findings.

2 Q. On Page 2 all it says there, Doctor, as I read it
3 is there is -- there is increased frequency of the mean HDL
4 as compare to these residuals who have never had it?

5 A. That's true, sir.

6 Q. All that tells is the mean is increased, doesn't
7 it, sir? Again you are comparing exposed people to exposed
8 people, aren't you, sir?

9 A. That's all we had, didn't have unexposed. We
10 didn't have unexposed people to examine, sir, so we were
11 using the ranges or means of the specific parameters. What
12 we were doing was using the what was outside of the normal
13 range and looked at those people, all of them exposed, some
14 in different departments --

15 Q. Now, Doctor, do you make any statement as to
16 whether or not this mean HDL means the person is sick, means
17 the person is healthy, means the person is abnormal, means
18 the person is normal? Do you make any statement at all,
19 Doctor?

20 A. I think it's --

21 Q. If so, show me.

22 A. It's difficult to do --

23 Q. Doctor, my question is do you make such a
24 statement, if so show me where it said.

1 A. We don't make any statement like that because you
2 can't interpret --

3 Q. Doctor, there is nothing in this statement, in this
4 Exhibit 1711 that refers to their health status, is there,
5 sir?

6 A. There is absolutely, sir, and you are looking at
7 it.

8 Q. Where is it, that paragraph?

9 A. You are looking at it, sir.

10 Q. That paragraph did not, Doctor. Now, what
11 paragraph does?

12 A. This paragraph does. It says that the mean HDL,
13 not that it's abnormal.

14 Q. No, that's right, doesn't say anything about
15 normal, abnormality, or sick, or healthy, does it, sir?

16 A. These people weren't sick.

17 Q. Excuse me, Doctor, my question is, this makes no
18 mention as to whether it's sick, whether it's abnormal,
19 whether it's high, whether it's low, does it, sir?

20 A. We said that the --

21 Q. Doctor, would you answer my question so I can pass
22 onto another?

23 A. Yes, I think we have.

24 Q. Where did you make the mention that it's sick?

1 A. When the residual chloracne was compared with these
2 who never had chloracne, there was an increased frequency of
3 the mean?

4 Q. Now, Doctor, all you are saying is that the average
5 HDL of those people that had chloracne was higher than those
6 people who never had chloracne, isn't that correct, sir?

7 A. That's what we say, sir.

8 Q. And, Doctor, what that could be is that both groups
9 have very high -- have high levels of HDL, just one group is
10 higher than the other, isn't that correct, sir?

11 A. Oh, no -- we have --

12 Q. Excuse me, sir, this statement that we are talking
13 about, all that means is one group of workers, as a group,
14 have got higher HDL's than another group of workers, isn't
15 that correct, sir, that paragraph?

16 A. All you have to do is refer to this to find out --

17 MR. CARR: Would you direct the witness to answer
18 the question?

19 THE COURT: Doctor, that was not the question that
20 was asked of you. Answer the question that was asked of
21 you. I've asked you that many times, I'd like you to
22 comply.

23 A. What is the question?

24 COURT REPORTER: "This statement that we are

1 talking about, all that means is one group of workers, as a
2 group, have got higher HDL's than another group of workers,
3 isn't that correct, sir, that paragraph?"

4 MR. HEINEMAN: Excuse me, weren't there two
5 questions in a row? Weren't there two questions?

6 MR. CARR: I think that states it. Answer the
7 question, Doctor.

8 A. That's what it says.

9 Q. Where else on that page is there some mention as to
10 the health status of these workers?

11 A. Okay, the second one, there is an increased
12 frequency of out of range. Now, number one is not
13 significant because it's within the range, but there is an
14 increased frequency of out of range cholesterol VLDL among
15 those with residual chloracne as compared with those who
16 never had chloracne.

17 Q. Now, what this means is, Doctor, is that there are
18 more workers who have got abnormal VLDL who had residual
19 chloracne than there are workers with abnormalities who have
20 never had chloracne, isn't that correct, sir?

21 A. No, sir, it's the very opposite, what it said is
22 that among those who had residual chloracne.

23 Q. Yes, that's what I said. A. No, you didn't.

24 Q. Compared to those who never had.

1 A. You said the reverse, among those who had residual
2 chloracne there was an increased frequency biostatistically
3 of out of range VLDL, which is largely triglycerides, by the
4 way, than those who never had chloracne, and it was
5 statistically significant, and when we adjusted for smoking,
6 it remained the same.

7 Q. Doctor, what you are saying is that there were more
8 people who had residual chloracne who also had abnormal VLDL
9 than there were in that group of people who never had
10 chloracne, isn't that correct, sir?

11 A. I'm not sure I'm following your logic, sir.

12 Q. Doctor, I'm not asking you to follow my logic.

13 A. That's the only way I can answer your question.
14 Would you read --

15 Q. You said here there was increased frequency out of
16 reference range of VLDL among those with residual chloracne,
17 did you not?

18 A. That's right.

19 Q. As compared with a group of people who never had
20 chloracne?

21 A. Right.

22 Q. Or who had a history or having history only, isn't
23 that correct, sir?

A. That's correct.

24 Q. What you are saying there, sir, is that the people

1 who have residual chloracne have got more abnormalities in
2 the VLDL than those people who don't have residual chloracne,
3 isn't that correct, sir?

4 A. In the VLDL.

5 Q. Isn't that correct, sir?

6 A. That's correct.

7 Q. So there could be 50 in the group of residual
8 chloracnes who have -- out of 51 who have abnormal VLDL, and
9 only 230 out of 50 in the people who didn't have chloracne,
10 isn't that correct, sir? But they would still be abnormal,
11 wouldn't they, sir? In both groups all you are saying,
12 Doctor, is that there are more abnormalities in the people
13 with residual chloracne than there are in the people who have
14 never had chloracne?

15 MR. HEINEMAN: Objection, Your Honor, multiple
16 question.

17 THE COURT: Objection is overruled.

18 A. Doesn't -- frequency doesn't mean that.

19 Q. What does it mean, Doctor?

20 A. Frequency means that there is a greater percentage.

21 Q. Yes, that's fine, that's exactly what I said.

22 A. Greater percentage.

23 Q. That means number, doesn't it, Doctor, greater
24 number of people?

1 A. No, it does -- no --

2 Q. What does it mean?

3 A. It means a ratio of abnormal to the total number.

4 Q. Yes. Means there are more people with abnormal --
5 this particular abnormal --

6 A. Greater percentage, sir.

7 Q. Right. Fine. A greater percentage of people with
8 abnormal lipids?

9 A. Okay.

10 Q. Okay.

11 A. And stated is particularly significant.

12 Q. In the residual chloracne group than there is in
13 the non-residual chloracne?

14 A. You understand it now, sir.

15 Q. Isn't that correct?

16 A. You understand now.

17 Q. All you are doing is comparing the number of
18 people?

19 A. No, you are comparing percentages.

20 THE COURT: Let him finish the question.

21 Q. All you are doing is comparing percentage of people
22 with abnormal VLDL with those having residual chloracne as
23 compared to those without, are you not, sir?

24 A. That's the nature of biostatistics.

1 Q. Isn't that what you are doing?

2 A. Yes, sir, that's the nature of biostatistics.

3 Q. That doesn't tell us whether or not those people
4 are healthy or sick, does it? All it tells us there are more
5 higher percentage of abnormalities in one group than there
6 are in another group, isn't that correct, sir?

7 A. If there were people --

8 Q. Excuse me --

9 A. Were they not healthy we would have cited them.

10 Q. Would you answer that question?

11 A. These are laboratory findings.

12 Q. Would you answer that question?

13 A. I have answered it. These are laboratory --

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

15 THE COURT: Your answer was not responsive to the
16 question. It does not answer the question. I'm ordering you
17 to answer the question that was asked of you not something
18 else, sir.

19 A. We have not cited illness here, sir.

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

22 A. I better find out what the original question was.

23 THE COURT: You haven't answered it again, I think
24 that would be best.

1 COURT REPORTER: "That doesn't tell us whether or
2 not those people are healthy or sick, does it? All it tells
3 us there are more higher percentage of abnormalities in one
4 group than there are in another group, isn't that correct,
5 sir?"

6 A. Laboratory abnormalities, sir, yes.

7 Q. Is that a yes to my question?

8 A. That is yes, sir.

9 Q. Doctor, is there anyplace else on this report that
10 you say the health status is set out?

11 A. Yes, sir.

12 Q. Where is that, sir?

13 A. It says no clinical parameter alterations with
14 additional work in Building 262 or 268 were found.

15 Q. Doctor, what you are saying there is the people
16 that worked in Building 262 or 268, they worked there, they
17 have the same lab abnormalities or normalities?

18 A. No, sir. It says --

19 Q. As the other people?

20 A. Does not, sir. Says clinical abnormalities. That
21 means on examination.

22 Q. Well, what you are saying, sir, upon examination
23 clinically then the people that work in these buildings have
24 the same problems as the other people, don't they, sir?

1 A. We sure do.

2 Q. And, Doctor, again, that doesn't tell us anything,
3 that could mean 99 out of 100 people are sick in both groups,
4 can't it, sir?

5 A. No, sir.

6 Q. Doctor, all you are saying there is no difference,
7 aren't you, sir?

8 A. In this summary, yes.

9 Q. Yes, my question is, sir, and you said this summary
10 tells us the health status of these people. My question,
11 that certainly doesn't tell us the health status, what you
12 are doing is comparing clinically one group with another
13 group, aren't you, sir?

14 A. That tells us an aspect of health status, yes, sir.

15 Q. That doesn't tell us -- they could all be sick or
16 all be healthy?

17 A. No, sir, if they were sick we would have cited it.

18 Q. That isn't my question. My question, as far as
19 this statement is concerned, you can't tell by reading the
20 statement whether they are all sick or whether they are all
21 healthy, can you, sir?

22 A. Not from there, that's why it's a good idea to go
23 to the tables.

24 Q. Where else on this page, sir, do you make a

1 reference to the health status of these people?

2 A. Well, we cite that in those working in Building 262
3 or 268 had a slight increase in blood chloride levels and in
4 percentage of eosinophils which eosin sustaining white cells
5 in the blood as compared with those who didn't work in those
6 areas.

7 Q. Doctor, that doesn't tell us again anything about
8 the health status of these people except how they compare to
9 one another, isn't that correct, sir?

10 A. No, it actually tells you that there was an
11 increase in their eosinophils and blood chloride as compared
12 with --

13 Q. As compared with, but that doesn't tell us whether
14 either group is sick or well, does it, sir?

15 A. Doesn't have anything about clinical --

16 Q. My question, sir, doesn't tell us anything as to
17 whether or not these people in these groups are sick or well,
18 does it, sir?

19 A. You have to take this at face value, sir.

20 Q. Would you answer my question, Doctor?

21 A. I have, sir.

22 THE COURT: Doctor, you have not answered the --
23 you have not. Answer the question. Your answer was not
24 responsive.

1 A. There is no specific statement about whether they
2 are sick, sir.

3 Q. That's not my question, Doctor. Would you answer
4 my question?

5 A. I think that's the answer.

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

8 A. I better find out what the question is.

9 THE COURT: Doctor, you are so directed. Your
10 answer was not responsive to the question.

11 COURT REPORTER: "My question, sir, doesn't tell us
12 anything as to whether or not these people in these groups
13 are sick or well, does it, sir?"

14 A. If you are referring to that particular statement
15 in five, that's so, sir, yes.

16 Q. Doctor, is there some other place on this document
17 where it refers, tells us whether or not these people are
18 sick or well.

19 Q. Referring to 1711, Dr. Suskind?

20 A. That's what I thought you were referring to, sir.
21 No. But if you go to the charts you'll find it.

22 MR. CARR: Your Honor, would you direct the witness
23 to just respond to the question and ask the jury to disregard
24 what he said.

1 THE COURT: Jury is so instructed.

2 A. In this --

3 THE COURT: Doctor, I'm not done. That was not
4 responsive to the question that was asked of you. Doctor, a
5 simple question was asked of you. Please respond to that
6 question only.

7 A. In this summary there is no other statements, sir.

8 THE COURT: Thank you.

9 Q. Doctor, there is in this summary, and we have gone
10 through every place you have identified then, no statement
11 that tells us the health status of these workers, is there,
12 sir?

13 A. Yes, it does. This is all about the health status
14 of the workers.

15 Q. Didn't we go through it, Doctor, didn't we go
16 through everything on this page?

17 A. Yes, we did, sir.

18 Q. Was there anyplace where it told us the health
19 status, sir?

20 A. Yeah.

21 Q. What page was that, we must have missed it?

22 A. Page 1.

23 Q. Where was that, sir?

24 A. In the -- these are the positive findings, sir.

1 Q. Excuse me, sir, where in this document 1711 does it
2 tell us the health status of these workers with the exception
3 of the skin problems?

4 A. These are the positive findings --

5 Q. My question is, where in this document. You say
6 now on Page 1. Where does it tell us about the health of
7 these people other than their skin problems?

8 A. That was their main problem, sir.

9 Q. Could you answer my question, sir?

10 A. No, that was their main problem.

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

13 THE COURT: Doctor, you are not answering the
14 question. You are not responding to it.

15 A. Other than the skin, no.

16 Q. All right. Doctor, then there is on this, in this
17 document, no place where it tells us the health status of
18 these workers other than the skin problems, isn't that
19 correct, sir?

20 A. I would certainly agree with you, because that's
21 all they had.

22 Q. Doctor, you didn't agree with me at the outset.
23 You said it did tell us the health status. Have you
24 forgotten that?

1 A. No, the health statis is right here, sir.

2 MR. HEINEMAN: Objection, Your Honor, counsel
3 approach the bench?

4 THE COURT: Sure.

5 (The following Side Bar conversation was had outside the
6 hearing of the jury.)

7 MR. HEINEMAN: I object to this game playing by Mr.
8 Carr with the changing of the questions and the changing of
9 the words. The Doctor was saying that the problem they have
10 is skin problems. When he asked him is there nothing in the
11 report that says anything about their health, he denied that,
12 he said, yes, there is, and he directed him to Page 1. Then
13 Mr. Carr says I mean other than the skin problems.

14 MR. CARR: Counsel, I started out this examination
15 referring to the skin problems on Page 1, this is how it
16 started. I said there is nothing in this report other than
17 the mention of skin problems as to the health, he said, yes,
18 there is, turn to Page 2, and then we went down each
19 paragraph on Page 2.

20 MR. HEINEMAN: Initially you'll recall, Mr. Carr,
21 you directed to Page 1, and that's when you raised the other
22 than the skin problems.

23 MR. CARR: That's exactly right, counsel, that's
24 what led us down that long cross examination.

1 MR. HEINEMAN: I object to the way that you play
2 games with the words by switching the questions back and
3 forth and then act as though they are the same questions, and
4 that's -- they are not the same questions and I object to it.

5 THE COURT: Objection is overruled. Questioning
6 has been proper.

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

8 Q. (by Mr. Carr) Is there in Exhibit 1711 any mention
9 of the health problems of these people other than the skin
10 problems?

11 A. I have answered that question, sir.

12 Q. Would you answer it for me again, please?

13 A. I would be delighted.

14 MR. HEINEMAN: Objection, asked and answered.

15 THE COURT: Objection is overruled.

16 A. I would be delighted to. This is the total summary
17 of the health status of these people.

18 MR. CARR: Your Honor, would you direct the witness
19 to answer my question?

20 THE COURT: Doctor, that was not responsive to the
21 question that was asked.

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

23 THE COURT: Doctor, that was not responsive to the
24 question that was asked, and it is not a complicated

1 question. Answer the question, sir.

2 A. Maybe I didn't hear it.

3 COURT REPORTER: "Is there in Exhibit 1711 any
4 mention of the health problems of these people other than the
5 skin problems?"

6 A. I believe there are, and I cited them on Page 2.

7 Q. Doctor, we went through each one on Page 2 and you
8 agreed that none of those things told us anything about the
9 health status of the workers, did you not, sir?

10 A. No, I didn't agree with that. You said that they
11 were, but this tells you about --

12 Q. Doctor, didn't you agree -- does number one tell us
13 anything about the health status of the people, sir, or does
14 it just tell us about the frequency of HDL, sir?

15 A. That's health status.

16 Q. Doctor, does it tell us whether the people are
17 healthy or unhealthy? Does it tell us their status of their
18 health?

19 A. It's a laboratory status, sir.

20 Q. My question is does it tell us anything about their
21 health, sir?

22 A. Yes.

23 Q. What does it tell us?

24 A. It says that the increased frequency of mean HDL

1 among those with residual chloracne when compared with those
2 who never had chloracne, there is an increased frequency, and
3 that is a health status aspect.

4 Q. Doctor, what that does is tell us one group has
5 more frequency of HDL than the other group, and we went
6 through all this once, Doctor. Doesn't tell us a thing about
7 --

8 A. Oh, yes, it does.

9 Q. May I finish my question --

10 THE COURT: Gentlemen, could the two of you
11 approach the bench, please?

12 (The following Side Bar conversation was had outside the
13 hearing of the jury.)

14 THE COURT: Due to this witness' recalcitrance of
15 going over the same thing twice, I will allow you to order
16 him to assume that he stated the health status as to these
17 people. We will move onto something else. I'm not going to
18 facilitate the delay of these proceedings by forcing you to
19 go through this again even though the witness is trying to
20 have you to do --

21 MR. HEINEMAN: Your Honor, I object to the Court
22 doing this, first of all because it's not accurate, and
23 secondly because it has not been requested by counsel. The
24 Court is thrusting himself into what appears to me to be an

1 advocates position by interposing himself into the
2 questioning of this witness, and I object to that.

3 THE COURT: Objection is overruled. I am trying to
4 facilitate the cross examination of a recalcitrant witness
5 who is refusing to answer questions, and I am putting myself
6 in the position of not allowing this trial to be delayed
7 forever by his refusal to answer questions, and denying what
8 he said five or ten minutes before and forcing another 20 or
9 25 minute re-examination of points that have already been
10 examined. I'm just not going to allow it to happen.

11 Objection is overruled. It's not an advocates position, it's
12 the proper position of the Judge. You may proceed.
13 (The following proceedings were had in open court.)

14 Q. (by Mr. Carr) Dr. Suskind, I want you to assume
15 that you have testified with regard to this exhibit that it
16 does not show the status of their health of these workers
17 other than skin problems, will you assume that, sir?

18 A. If I do it's inaccurate, sir.

19 MR. CARR: Your Honor, would you direct the witness
20 --

21 THE COURT: Doctor, you are ordered to assume it.

22 A. Okay.

23 Q. Doctor, is there any other document that tells us
24 the health status of these workers except by comparison of

1 one group to another group? Is there any other document, any
2 reference in a document that tells us whether these people
3 are sick or healthy?

4 A. In this document?

5 Q. We have gone through this document. Any other
6 document?

7 A. I believe if you'll go through the tables you'll
8 find a --

9 Q. Are you talking about the tables in 1500, sir, in
10 Plaintiff's Exhibit 1500?

11 Q. This is the report you submitted dated September
12 29th, 1980.

13 A. Oh, no, sir. No, sir. This is not September 29.
14 This is '86, sir.

15 Q. First of all --

16 A. This is '86, not '80.

17 Q. First of all, Doctor, let's go through Plaintiff's
18 Exhibit 1500.

19 A. What's that?

20 Q. That's the report of 1980, sir.

21 Q. Is there anything in that document that tells us
22 the health status of these workers other than the skin
23 problems, Doctor?

24 A. Yes, I believe there is --

1 Q. Direct me to it, would you please?

2 A. There is tables regarding --

3 MR. HEINEMAN: Excuse me, Your Honor, may counsel
4 approach the bench?

5 THE COURT: Yes, you may.

6 (The following Side Bar conversation was had outside the
7 hearing of the jury.)

8 MR. HEINEMAN: My notes show that we have just been
9 through this very same inquiry on Plaintiff's Exhibit 1500
10 and I would object to doing it again.

11 THE COURT: 1500?

12 MR. HEINEMAN: Yes, sir.

13 MR. CARR: We started with it but he jumped to
14 1711.

15 MR. HEINEMAN: No, sir, you finished with it.

16 MR. CARR: I did not finish with it.

17 MR. HEINEMAN: My notes, any mention made as to the
18 health status of the workers, he said, yes. He named several
19 pages and you argued with him saying, no, all that does is
20 compare one kind of people to another kind of people, and he
21 said that exposed people were all we had to examine. He said
22 none of them were sick, and then finally when you asked him
23 1500, he said that it does not say, it does not say in 1500
24 whether they are healthy or not healthy. That's what my

1 notes show. So we have just been down this road. I object
2 to doing it again.

3 MR. CARR: The witness apparently doesn't believe
4 we have been down that road because he wants to refer me to
5 some people.

6 MR. HEINEMAN: He's being ordered to do it. You
7 are questioning him. He's not questioning you.

8 THE COURT: You are saying your notes reflect he's
9 already said there is nothing commenting whether they are
10 healthy or sick?

11 MR. HEINEMAN: No, what it says -- doesn't state in
12 there that they are healthy or they are not healthy because
13 that's what Mr. Carr asked.

14 THE COURT: Right. Right.

15 MR. HEINEMAN: Doesn't say that there isn't
16 anything in there that would be a comment on whether they are
17 healthy or not, just doesn't say healthy or not healthy,
18 because that's what Mr. Carr asked him.

19 MR. CARR: Your Honor, I'm asking him now is there
20 anything that tells us these people are healthy or unhealthy,
21 sick or well, by interpretation, by any way he wants to look
22 at it. You are using the words what it doesn't say, the
23 clear implication, the emphasis on the word say somehow or
24 another it can be interpreted --

1 MR. HEINEMAN: That's because we went through this
2 and you asked him and he said, yes. He went to Page 8 or 9,
3 whatever it is, and he went through these pages and you
4 argued with him.

5 THE COURT: According to the position you are
6 taking then if this witness doesn't remember that we have
7 gone through that, you would be justified in having him
8 assume that as to this document also he said there were no
9 such comments and move onto the next document.

10 MR. HEINEMAN: He doesn't say he doesn't remember
11 whether we have gone through 1500. He was asked to pull out
12 1500 and go through it.

13 THE COURT: No, he was asked to point out things
14 which would have been in repetition of what you say he's
15 already said were not there. There is a difference.

16 MR. HEINEMAN: No.

17 MR. CARR: Counsel, are you agreeing that I may
18 have this witness assume that there is nothing in this report
19 being interpreted to show whether or not they are healthy or
20 well?

21 MR. HEINEMAN: No.

22 MR. CARR: I didn't think you would.

23 MR. HEINEMAN: No, because in his opinion there
24 were things that could be interpreted.

1 MR. CARR: That's what I'm going to ask.

2 THE COURT: Then you should go ahead with your
3 question.

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

5 Q. (by Mr. Carr) Doctor, let us take this report, if
6 we would, Page --

7 THE COURT: Before we get into that, let's take a
8 break.

9 MR. CARR: Yes, Your Honor.

10 THE COURT: Okay, we will take a short recess at
11 this time and then resume questioning. The admonishments I
12 gave you earlier will apply during this break also. Court is
13 in recess.

14 (Following a recess, these proceedings were had in open
15 court.)

16 Q. (by Mr. Carr) Dr. Suskind, rather than go through
17 1500 again, let me rephrase my question to you. Is there
18 anyplace in the report of September 1980 in which the health
19 status of these workers is mentioned that we have not yet
20 discussed?

21 A. I'm not sure how completely we have discussed it,
22 but perhaps you can refresh my memory.

23 Q. I don't want to recover territory that we already
24 covered?

1 A. Did we cover table 15, 16, 17 --

2 Q. Yes, we did. We discussed those already.

3 A. Those are critical pieces of information about
4 health status, sir.

5 Q. All right, Doctor, but we have already agreed or
6 you agreed that this compares people with chloracne with
7 people without chloracne, and it makes no mention as to
8 whether or not they are healthy or unhealthy. We have
9 already covered that. Now, is there --

10 A. Well, it's a laboratory finding, sir.

11 Q. I understand that, but it doesn't tell us whether
12 these people are sick or ill, does it, sir, or healthy?

13 A. There is no clinical -- no clinical interpretation
14 of these people other than their skin, which was the
15 findings.

16 Q. Doctor, my question is other than the skin, is
17 there any place in this document that tells us whether or not
18 the people are sick or healthy other than what we have
19 already discussed?

20 A. I believe we have covered everything in that
21 document that refers to health status, sir.

22 Q. Thank you, Doctor. Now, Doctor, is there any other
23 documents or reports that you have made relating to the
24 health status of these workers that tells us their health

1 status of these workers pursuant to the study that we have
2 not yet covered?

3 A. I don't believe we have covered in any detail the
4 data base which is summarized here in whatever this exhibit
5 -- I'm sorry Exhibit 1711.

6 Q. Doctor, we have gone through the analysis of your
7 biostatistician, Monsanto Exhibit 1711, already and I wish
8 not to recover that. My question is, sir, is there any
9 report or document that tells us the health status of any of
10 these workers at this Krummrich plant excepting their skin
11 problems other than what we have already covered, sir?

12 A. Oh, yes, sir.

13 Q. What is that?

14 A. Indeed there is.

15 Q. What is that?

16 A. Well, if you'll refer to, and I don't know what
17 number that is, Mr. Carr, the table references for -- and
18 there are five sets, I believe.

19 Q. That's Plaintiff's Exhibit 1808. Now, what is
20 there, sir, that tells us the health of these workers other
21 than the skin problems?

22 A. Right, and I think that if you'll look at the
23 personal medical history --

24 Q. In which group would that -- are you referring to,

1 Doctor?

2 A. It's in all of these tables, sir. It would be the
3 6th page of each of those tables where it says personal
4 medical history, headaches, high blood pressure, bronchitis,
5 pneumonia and so on.

6 Q. I have the one in front of me that's in the group
7 of exhibits that's entitled department work by age and by
8 education. Will you get that one, please, sir?

9 MR. HEINEMAN: Excuse me, Your Honor, may counsel
10 approach the bench?

11 THE COURT: Sure.

12 MR. HEINEMAN: I'd like -- this exhibit has been
13 marked. I'd like to have it offered before the witness is
14 questioned about it. I would object --

15 THE COURT: 1808?

16 MR. HEINEMAN: I would object to his being
17 questioned about it unless it's been offered and admitted
18 into evidence.

19 MR. CARR: I'll offer it and put it into evidence.

20 THE COURT: Any objection to it?

21 MR. HEINEMAN: I have no objection.

22 THE COURT: Fine. It's admitted.

23 MR. HEINEMAN: I'm assuming it's complete. I
24 haven't seen it, however.

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

2 Q. (by Mr. Carr) Are you at that particular place,
3 Doctor?

4 A. I have that one, the one I was referring to which
5 is the initial one. If you take the whole group --

6 Q. All right. What's the heading of that particular
7 document?

8 A. Well, the heading of it is just age and education.

9 Q. All right. Thank you.

10 A. And if you go to the 6th page, I believe, you'll
11 see there is a personal medical history, and because we had
12 access --

13 Q. All right. Doctor, if you don't mind, I'd like to
14 ask the questions about this exhibit. Isn't this the one
15 that says personal medical history, personal, and then it has
16 a column with the number and the percentages?

17 A. Right.

18 Q. And this tells us then, sir, this is the exhibit
19 that you prepared something like a month before you came
20 here, is that correct, sir?

21 A. No, we had been working on it for well over a
22 year. There is a lot of information. Data analysis takes a
23 long time, sir.

24 Q. Didn't you tell us earlier --

1 A. It was completed. Completed, sir.

2 Q. Doctor, if you don't mind, let me finish. Didn't
3 you tell Mr. Heineman that this was prepared something like a
4 month before you came to court?

5 A. This was, sir.

6 Q. But the tables were not?

7 A. No, the tables were an accumulation of effort well
8 over a year, sir.

9 Q. All right. Doctor, then you were working on these
10 tables for a year before you came here, is that correct, sir?

11 A. Absolutely, working on the final report, sir.

12 Q. Relating to this personal medical history, this
13 then refers to their current medical condition, sir?

14 A. No, it refers to the medical history that they have
15 --

16 Q. Didn't you tell us that that included current
17 problems?

18 A. They have had in the past --

19 Q. Excuse me, Doctor, didn't you tell us earlier that
20 this included current medical problems?

21 A. Right, that included current medical problems.

22 Q. So from this we see that 55 percent of your people
23 have headaches, is that correct, sir?

24 A. Have had headaches now and in the past.

1 Q. All right, Doctor. Now, and --
2 A. The high blood pressure would be current, sir.
3 Q. If we talk about bad headaches for a moment.
4 A. If you wish, sir.
5 Q. Headaches is included in the exhibit that I've
6 given you before, is it not, sir?
7 A. Which one are you talking about?
8 Q. 15 -- 1507, sir "a"?
9 A. 1507a?
10 Q. Yes, Doctor.
11 A. Yes, sir.
12 Q. Now, Doctor, 55 percent of your people at that
13 plant answered this with relation to the headache problem,
14 and isn't that, Doctor, a clinical effect, sir?
15 A. No, sir.
16 Q. Doctor, have you not testified earlier that it is a
17 clinical effect?
18 A. On that chart, sir, yes.
19 Q. Doctor, and can it be a clinical effect of exposure
20 to toxic substances?
21 A. It might be.
22 Q. Thank you, Doctor. Can it be?
23 A. I said it might be.
24 Q. I know that, Doctor, I heard you very plainly. Did

1 you hear my question plainly?

2 A. If you want me to use your language, sir, which you
3 insist on, it can be.

4 Q. Doctor, you understand that I formed the questions
5 that I want to ask for the purpose of proving particular
6 points. Now, if you disagree you have the right to
7 disagree.

8 A. But I don't have to use --

9 THE COURT: Doctor, please let him finish.

10 Q. I do have the right to ask you the question in the
11 way I want to ask it and expect you to respond to it. You do
12 agree that it can be caused by toxic substances?

13 A. My answer to that is it might be, and if it means
14 the same thing, we will go along with it.

15 Q. Doctor, I don't want you to go along with
16 anything. My questions is it can. Can it not be caused by
17 toxic substances?

18 A. If can means might, yes.

19 Q. Doctor, if to you can mean might it's perfectly
20 fine with me. It can be caused by toxic substances, can it
21 not, sir?

22 A. Can and might do not mean the same thing to me,
23 sir.

24 Q. Then, Doctor, then I don't want you to answer that

1 it can if it doesn't mean the same to you, Doctor. Can toxic
2 substances cause headaches?

3 A. Toxic substances -- it is possible for toxic
4 substances to cause headaches.

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

7 THE COURT: Doctor, that was not responsive.
8 Answer the question that was asked of you, sir.

9 A. I would use your words and it can.

10 MR. CARR: Your Honor, would you direct the witness
11 not to preface the remark that way I want? Doctor, the
12 wording used in the way you would use it, can in your
13 judgment the way you'd use the word can, can toxic substances
14 cause headaches? Not the way I use the word can, but the way
15 you use the word can?

16 A. If it's the way I use the word can, it might.

17 Q. Doctor, that's not what I'm asking you.

18 A. Yes, you are.

19 THE COURT: Doctor, Doctor --

20 A. At least I think so.

21 THE COURT: Doctor, no, that was not responsive to
22 the question. Listen to the question again and answer the
23 question that was asked of you. Counsel, both plaintiff and
24 defendant, had asked you the questions, have the right, as a

1 matter of fact, have the responsibility to frame the
2 questions with the wording that they feel should be used.
3 Please listen to the question and answer the question
4 directly.

5 A. Toxic substance can.

6 MR. HEINEMAN: May counsel approach the bench?

7 THE COURT: Yes, you may.

8 (The following Side Bar conversation was had outside the
9 hearing of the jury.)

10 MR. HEINEMAN: May I object to the efforts of Court
11 and counsel to extract a particular answer from this
12 witness. He has not -- he is not required to answer in the
13 questioners words in the Illinois law or any any other law.
14 I object to it.

15 THE COURT: He is required to answer the question
16 asked of him. He is not allowed to get away with
17 non-responsive answers, and your objection is overruled
18 because you are trying to defend a non-responsive answer.
19 You may continue.

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

21 Q. (by Mr. Carr) Would you answer the question?

22 A. Toxic substances can cause headaches.

23 Q. Thank you, Doctor. Now, Doctor, that is the only
24 symptoms or clinical effects that is in part of your

1 questionnaire, isn't that correct, sir, the rest of the
2 questionnaire deals with sleep difficulty, fatigue, poor
3 appetite and neurobehavioral problems, you recall that, sir?

4 A. I believe so.

5 Q. And, Doctor, the rest of the personal medical
6 history that you are referring to, deals not with the
7 questions asked by the interviewer for current medical
8 problems on the page numbered 11 that we are talking about,
9 right, sir?

10 A. We are not talking about -- may I just look at it,
11 sir?

12 Q. Let me put it to you a different way, Doctor. You
13 gleaned certain information on Page 11 from the workers that
14 were interviewed, did you not, sir?

15 A. Yeah.

16 Q. And part of that information you gleaned was
17 headaches, wasn't it, sir?

18 A. We did.

19 Q. And, Doctor, you also asked questions about
20 sleeping, did you not, sir?

21 A. We did.

22 Q. Is there any statement in any of these tables, or
23 this table you are referring to, about problems that these
24 people may have with sleeping?

1 A. We didn't use that --

2 Q. Would you answer my question, please, Doctor?

3 A. No, we didn't cite that.

4 Q. Doctor, will you answer my question? Is there any
5 mention made in your report, in your table, of the trouble
6 people are having in sleeping, sir?

7 MR. HEINEMAN: Objection, asked and answered.

8 THE COURT: Objection is overruled. It is -- it
9 has not been.

10 A. Not in any table, sir.

11 Q. In any other table?

12 A. No, sir.

13 Q. Any report, Doctor?

14 A. No, sir.

15 Q. All right. Now, Doctor, is there any mention made
16 of the problem that people are having when they responded to
17 the question, are you tired most of the time? Does your
18 report reflect the number of people or the problems they were
19 having with being tired in anyplace, Doctor?

20 A. In this report, no, sir.

21 Q. In any report, Doctor?

22 A. No, sir.

23 Q. Does the report or any other report you made on the
24 Krummrich people reflect the problems that they were having

1 with needing more sleep, sir?

2 A. No, it does not, sir.

3 Q. Do you find that funny, Doctor?

4 A. No, I don't because --

5 Q. Doctor, I noted you laughed at it.

6 A. Because it has a simple answer.

7 Q. Doctor, my question is, does any report reflect the

8 results of this question, sir, that you asked these people?

9 A. We have not cited it in this --

10 Q. Doctor, you cite 55 percent of the people are

11 having problems with headaches?

12 A. Not from this questionnaire, sir, not from that

13 questionnaire.

14 Q. Doctor, as part of your study, isn't it, sir?

15 A. It's from another questionnaire, which you know is

16 different.

17 Q. No question about that, Doctor, I'm not quarrelling

18 with that.

19 A. Oh, yes, you are.

20 Q. My question is, sir, do you reflect anywhere in

21 your report the problem that people having a poor appetite?

22 A. No.

23 Q. Do you reflect anywhere in your report their

24 neurobehavioral problem, sir?

1 A. Are you talking about temper?

2 Q. Losing their temper or feeling angry?

3 A. No, we do not.

4 Q. Doctor, that question was asked of each and every
5 worker, wasn't it, sir?

6 A. Absolutely.

7 Q. And it was responded to by each and every worker,
8 wasn't it, sir?

9 A. I believe so.

10 Q. And there altogether we have categorized them in
11 about five categories, Doctor, and have you looked at 1507a
12 to find out the number of people who had one or more of these
13 symptoms of which you inquired?

14 A. Are you talking about this --

15 Q. The document you have in your hand, have you looked
16 at that, sir?

17 A. Oh, absolutely.

18 Q. And, Doctor --

19 A. It's wrong.

20 MR. CARR: Doctor, would you direct the witness to
21 answer the question? Would you ask the jury to disregard
22 what he said?

23 THE COURT: Doctor, that was in no way responsive
24 to anything that was asked of you. It was a non-responsive

1 answer. I've asked you dozens of times not to make
2 non-responsive answers. I'm ordering you not to do so.
3 Ladies and gentlemen of the jury, I'm ordering you to
4 disregard the comment that was made by the doctor. It was
5 not responsive to any question. It was not a subject before
6 him.

7 Q. (by Mr. Carr) Dr. Suskind, have you looked to see
8 if Beckman or Bickford has four of these symptoms reported to
9 you?

10 A. Have I looked since I saw this?

11 Q. Yes, Doctor.

12 A. I haven't looked at any of these since I saw this.

13 Q. Doctor, did you look to see if Armstrong had four
14 of these five or six problems checked off here, sir?

15 A. I say I haven't looked, sir. You can go through
16 the whole list.

17 Q. Doctor, did you make any attempt to dispute or
18 verify that these men reported these problems in answering
19 that questionnaire?

20 A. I know what problems they reported, sir.

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

23 THE COURT: Doctor, please respond to the question
24 that's asked of you, not another comment.

1 A. Well, we will have to have the question again.

2 COURT REPORTER: "Doctor, did you make any attempt
3 to dispute or verify that these men reported these problems
4 in answering that questionnaire?"

5 A. Yes.

6 Q. And did you verify that they in fact made these
7 complaints as set out here, Doctor?

8 A. That they made the complaint?

9 Q. Yes.

10 A. Yes.

11 Q. And did -- does this indeed accurately reflect the
12 complaints they made on Page 11, sir?

13 A. No, sir.

14 Q. Which one is inaccurate, sir?

15 A. All of them.

16 Q. Mr. Armstrong did not make four complaints, sir?

17 A. No, it isn't that.

18 Q. How many complaints did he make?

19 A. What I can remember --

20 Q. Doctor, how many complaints did he make?

21 A. I can't tell you.

22 Q. Dr. Roush has testified under examination and Miss
23 Nicks have testified, and we have had all the reports and all
24 the records in evidence, Doctor, and one of these checks

1 represents a complaint made by one of these persons on Page
2 11, are you aware of that, sir?

3 A. According to Miss Nicks.

4 Q. And according to Dr. Roush?

5 A. I haven't consulted Dr. Roush about this.

6 Q. Doctor, have you bothered to check to see whether
7 or not Armstrong had four complaints?

8 A. No, but I know what they complained about, sir.

9 Q. Excuse me. Did you bother to check whether or not
10 he had four complaints, sir?

11 A. What we did, sir --

12 Q. Excuse me. Did you check to see whether or not the
13 man had these current problems that you asked him about?

14 A. Individually?

15 Q. Yes, Doctor.

16 A. When we wrote the report we did.

17 Q. Where did you mention it, Doctor, in your report?

18 A. We didn't mention it because we didn't think it was
19 significant, sir.

20 Q. Doctor, the point is you did not -- can you dispute
21 that these men complained of these problems to your
22 interviewer, Doctor?

23 A. We --

24 Q. Can you dispute that fact, Doctor?

1 A. I have not reviewed that, but I can tell you what
2 we did review.

3 Q. Doctor, can you dispute that fact that these men
4 complained to your interviewer of these problems as
5 represented by these checkmarks?

6 A. Yes, sir.

7 Q. And which one can you dispute, sir, did Armstrong
8 complain about?

9 A. All of them, sir.

10 Q. None of them made these complaints, Doctor?

11 A. They may have made the complaints but whether or
12 not they were significant is another story.

13 Q. I'm not asking you whether or not they are
14 significant.

15 A. That's the nature of the report.

16 Q. Did I use the word significant, Doctor?

17 A. That's the nature of the report. Are they
18 significant.

19 Q. Doctor, your question was do you have these
20 problems or do you not have these problems, isn't that what
21 you asked, Doctor?

22 A. Oh, yes, yes.

23 Q. And you asked for a yes or no, didn't you, sir?

24 A. Yes, we did.

1 Q. Now, Doctor, can you dispute that these men
2 answered those questions yes when asked about those symptoms
3 as represented by these checkmarks?

4 A. Can I dispute the fact that individuals did this?
5 I can't dispute that.

6 Q. Thanks Doctor.

7 A. But I can interpret it differently.

8 Q. I'm not asking for your interpretation.

9 A. That's the report, sir.

10 THE COURT: Doctor, don't respond to another
11 question in the middle of the question that counsel is trying
12 to ask you. Listen to the question and just respond to what
13 the questioner is asking you.

14 A. Yes, sir.

15 Q. Doctor, in your judgment, did these men at
16 Krummrich truthfully report the symptoms that they had in
17 response to the questions asked by the interviewer on Page
18 11?

19 A. I have no idea, sir.

20 Q. You have no idea whether or not they were
21 truthful? You talked to these men, didn't you, sir?

22 A. I didn't interview them.

23 Q. Didn't you see them?

24 A. Yes, I --

1 Q. Did you examine them?
2 A. I examined them, yes, sir.
3 Q. Did you ask them questions?
4 A. We sure did.
5 Q. Did the people strike you working at Krummrich as a
6 truthful group of men?
7 A. Yes.
8 Q. All right then, Doctor, I take it you have no
9 reason to suspect that these men would be lying when they
10 said they had these problems, is that right, sir?
11 A. To the interviewer.
12 Q. Is that right, sir?
13 A. They said something else to the doctor, though.
14 Q. Is that right, sir?
15 A. Doesn't confirm the doctor's --
16 Q. Excuse me, Doctor, is that right, sir?
17 A. That they were lying? I have no idea.
18 Q. Do you have anything to suggest that these men were
19 lying to you?
20 A. No, not lying.
21 Q. Or lying to the interviewer?
22 A. No, I do not.
23 Q. Do you believe they truthfully answered the
24 questions asked them that appears on Page 11, sir?

1 A. I would hope they did.

2 Q. Do you believe they did?

3 A. I said I would hope they did.

4 Q. But my question is do you believe they did, sir?

5 A. I don't know about the belief part of it,

6 sir.

7 Q. My question is your belief, you surely have a
8 belief as to whether or not these men are lying or telling
9 the truth?

10 A. It's the same question, sir, I have answered it.

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

13 THE COURT: Doctor, listen to the question again.

14 A. Would you --

15 Q. You have not answered the question so far?

16 A. I don't think I can answer that question, sir.

17 Q. The Court has directed you to answer the question,
18 Dr. Suskind.

19 THE COURT: You are so directed answer the
20 question.

21 A. If I say yes or no it would be inaccurate,
22 sir.

23 THE COURT: Doctor, I'm ordering you to answer the
24 question that was asked of you. Answer the question, sir.

1 A. I have no reason to believe that they were not
2 telling the truth, sir.

3 Q. Doctor, can I assume that to take that to mean that
4 you believe they were telling the truth?

5 A. You have heard my answer, sir.

6 Q. But I've asked you another question, Dr. Suskind.
7 Would you please answer that question?

8 A. Isn't it the same question, sir?

9 Q. Well, the if it is then you can say yes.

10 A. Well, I have said yes, sir.

11 Q. Thank you, Doctor. Now, Doctor, are you aware of
12 the fact, sir, that 77 percent of these workers at Krummrich
13 that you believe were telling the truth had one or more of
14 these symptoms that you inquired, that your interviewer
15 inquired about on Page 11?

16 A. Sir, if you are going by this --

17 MR. CARR: Your Honor, would you direct the witness
18 to answer my question?

19 THE COURT: Doctor, please respond to the question.

20 A. No, I am not aware of it, sir.

21 Q. Doctor, would it be significant to you, sir, if 77
22 percent of a group of chemical workers exposed to chemicals
23 that can cause clinical effects such as neurobehavioral
24 problems, headaches, fatigue, would it be significant to you,

1 sir, as a toxicologist, to realize that 77 percent of these
2 people had one or more such symptoms?

3 MR. HEINEMAN: Objection, Your Honor, counsel
4 approach the bench?

5 THE COURT: Yes, you may.

6 (The following Side Bar conversation was had outside the
7 hearing of the jury.)

8 MR. HEINEMAN: I object to the form of the question
9 that assumes a statement that's an outright falsehood, that
10 is that it contains the material that can cause those
11 clinical effects, when we have here at Krummrich, sir, is a
12 pentachlorophenol study.

13 Mr. Carr knows that and yet he's trying to say
14 there is TCDD in it, and there isn't.

15 MR. CARR: We have plenty of evidence that there
16 was TCDD in all of your products excluding -- and even
17 including, not including penta.

18 MR. HEINEMAN: No, and you say this is a
19 pentachlorophenol study. That's what the document refers
20 to. It does refer also to ortho and para, and what you note
21 is that there is only five or six people that worked
22 exclusively on 2,3,7 and there weren't any of those things
23 found. Well, they didn't have any chloracne in any of
24 them.

1 MR. CARR: That's something you can argue, isn't
2 it, Counsel? Our position is, and Dr. Roush confirms it,
3 that working in the plant exposes you to all the chemical
4 substances in that plant.

5 MR. HEINEMAN: Dr. Roush doesn't confirm that.

6 THE COURT: He does indeed. Objection is
7 overruled.

8 MR. HEINEMAN: He says theoretically, and I object
9 to that question, that it assumes a fact which is not in
10 evidence and which Mr. Carr knows the opposite is true.

11 THE COURT: Objection is overruled. That's
12 incorrect.

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

14 Q. (by Mr. Carr) Would you answer my question,
15 please, Dr. Suskind?

16 A. If that were accurate, sir.

17 Q. Yes.

18 A. If it were indeed accurate.

19 Q. Yes.

20 A. It depends upon who did the checking. I would
21 regard that as very surprising. If it were accurate.

22 Q. Doctor, that isn't --

23 A. That's my answer, sir.

24 Q. Doctor, that isn't what I asked you.

1 A. Yes, you did.

2 Q. What did I ask you?

3 A. You asked me would I be surprised if 70 percent,
4 isn't that what you asked me?

5 Q. 77 percent --

6 A. 77 percent.

7 Q. All right, Doctor.

8 A. I would be very surprised, but I would want to know
9 who made this count, and you need to have somebody well
10 qualified to look through charts without instructions, well
11 qualified to do this kind of thing, and I don't regard this
12 as accurate, sir.

13 Q. Doctor, do you consider a registered nurse
14 qualified to look at charts?

15 A. No, sir.

16 Q. You do not?

17 A. Absolutely not.

18 Q. Do not registered nurses called upon in the line of
19 their duty -- do they not look at charts all the time every
20 day, and do they not make entries in the charts, and do they
21 not call the attention of the doctor to things that is in the
22 charts so that the doctor can make a decision as to what to
23 do?

24 A. Not those charts, sir, not my charts.

1 Q. Would you answer my question?

2 A. Yes, sir, I have answered it. They are not
3 qualified.

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

6 THE COURT: Doctor, you haven't answered the
7 question. You've responded to something else you wanted to
8 respond to and not the question that was asked of you. I'm
9 ordering you to answer the question that was asked of you.

10 A. Would you read the question?

11 COURT REPORTER: "Do not registered nurses called
12 upon in the line of their duty -- do they not look at charts
13 all the time every day, and and do they not make entries in
14 the charts, and do they not call the attention of the doctor
15 to things that is in the charts so that the doctor can make a
16 decision as to what to do?"

17 A. No, sir.

18 Q. ~~This~~ ^{they} don't do that, Dr. Suskind?

19 A. Some of them do. Some of them are qualified,
20 others are not.

21 Q. Doctor, my question is, don't registered nurses do
22 these things?

23 A. Some.

24 Q. That work in hospitals?

1 A. Some.

2 Q. Do you know of a registered nurse that works in a
3 hospital that doesn't do that, Doctor?

4 A. That is --

5 Q. Do you know of a single registered nurse that works
6 in a hospital that doesn't make entries in charts and call
7 attention of doctors to things in charts and read charts and
8 point out abnormalities and problems that occur in charts?
9 Do you know of a single nurse that doesn't do that?

10 A. Hospital records are different than these records,
11 sir.

12 Q. My question refers to hospital records and you know
13 my question does and answer that question, please.

14 A. If you are talking about routine hospital records
15 --

16 Q. That's what I'm talking about.

17 A. Some of them do.

18 Q. No, my question is don't all of them do that?

19 A. No, not necessarily.

20 Q. Tell me which ones don't?

21 A. Some of them that are not qualified to do --

22 Q. They are all qualified.

23 A. No, they are not.

24 Q. Which registered nurse is not qualified by

1 training, by experience, by responsibility to do those very
2 things?

3 A. All depends upon training. All depends upon
4 experience. It all depends upon levels of intelligence, sir,
5 and alertness, and some nurses are more alert, more
6 intelligent, more skillful than others.

7 Q. Well, certainly won't quarrel with that, Doctor,
8 but aren't registered nurses -- aren't they required to pass
9 certain tests relative to charts, entries in charts,
10 reporting in charts, looking at patients, taking fevers and
11 things of that sort and entering things in charts? Aren't
12 they required to do that before they can be called registered
13 nurses?

14 A. When they are students they are supposed to have
15 some training like that.

16 Q. Aren't they required to do that before they can be
17 called registered nurses?

18 A. Not necessarily.

19 Q. They are not, Doctor?

20 A. No.

21 Q. What does a registered nurse have to be qualified
22 to do, Doctor?

23 A. She is supposed to be qualified to do the job of a
24 general nurse.

1 Q. And what is that, Doctor?

2 A. And the range of training is very broad, sir.

3 Q. Doctor, what is that? Are they trained in the use
4 of hospital charts and reading and examining and making
5 entries?

6 A. They are usually trained to make entries in it.

7 Q. Yes, Doctor.

8 A. They are usually trained to make entries in it, but
9 many of them are not alert to call the attention of the
10 doctor to an abnormal lab finding. They should, but not
11 necessarily.

12 Q. Yes, Doctor, they should if they are trained to do
13 that?

14 A. No, sir.

15 Q. Oh, no, why should they do something they are not
16 trained to do Dr. Suskind?

17 A. They may be trained.

18 Q. Why should they do something that they are not
19 trained to do?

20 A. They may be trained to do that.

21 Q. Doctor, they are trained to do it, and they are
22 required to do it, are they not, sir?

23 A. They are not required to call the doctor's
24 attention to things -- it's up to --

1 Q. I thought you just got through saying that was
2 their job to do it.

3 A. That is a job.

4 Q. Didn't you just say it was their job to do that
5 very thing?

6 A. No, I didn't. I said a well-trained nurse would,
7 and the training of a nurse varies tremendously even in these
8 United States, sir.

9 Q. Doctor, do you not agree that a well-trained nurse,
10 a registered nurse is qualified to read charts and bring the
11 attention of the doctor to things in those charts that they
12 think might be significant to the doctor and for the
13 protection of the health of the patient?

14 A. Well-trained nurse should and would.

15 Q. Thank you, Doctor. Now, Doctor, is there anything
16 about the question, "Do you have trouble sleeping," that a
17 well-trained nurse could not interpret where one column is
18 checked yes and another column is for checking no? Is there
19 anything that a registered nurse cannot interpret on that
20 sheet, on that question, Doctor?

21 MR. HEINEMAN: Objection, Your Honor, can counsel
22 approach the bench?

23 THE COURT: Sure.

24 (The following Side Bar conversation was had outside the

1 hearing of the jury.)

2 MR. HEINEMAN: Your Honor, I object to this
3 questioning of this witness with respect to what a
4 well-trained registered nurse would do or could do in
5 connection with checking what's on this chart, on the grounds
6 that Nurse Nicks testified that she exercised no discretion
7 whatsoever. All she did was do what Mr. Carr told her to do
8 and that was if there was -- count the yeses and --

9 MR. CARR: Exactly right.

10 MR. HEINEMAN: That's all she did, what Mr. Carr
11 told her to do.

12 MR. CARR: Exactly right.

13 MR. HEINEMAN: She exercised no discretion, no
14 judgment, reached no conclusions.

15 MR. CARR: Didn't try to ask her to do that.

16 MR. HEINEMAN: Now, it is -- there is absolutely no
17 relevance, therefore, as to whether or not a registered nurse
18 -- it implies in the very question that that's what Nurse
19 Nicks did when the jury has heard the opposite. That isn't
20 what she did. And so I object to his questioning using as a
21 premise that the registered nurse would do something like
22 that or could do something like that, because this one
23 didn't.

24 MR. CARR: This one did not check off the yeses and

1 the noes for trouble sleeping and tired most of the time and
2 need more sleep.

3 MR. HEINEMAN: She testified that she did exactly
4 what you told her to do and nothing else.

5 MR. CARR: Right, what I told her to do was check
6 off those that had marked trouble sleeping, didn't I,
7 counsel?

8 MR. HEINEMAN: Right, she exercised no discretion.

9 MR. CARR: Is there any discretion to exercise
10 there, Mr. Heineman, do you have trouble sleeping, put down
11 yes, put down no? Is there any training needed to -- cannot
12 your six year old child do that?

13 MR. HEINEMAN: Yes, I think my six year old child
14 could have prepared that exhibit, and so that's exactly what
15 I'm talking about.

16 THE COURT: Objection is overruled.

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

18 Q. (by Mr. Carr) Doctor, would a registered nurse
19 have any difficulty in responding to the question to
20 interpret -- not to interpret, to record, if you will, the
21 responses to the question, "Do you have trouble sleeping,"
22 yes or no?

23 A. I don't know.

24 Q. Sir?

1 A. I don't know.

2 Q. You don't know?

3 A. No.

4 Q. Doctor, a six year old child can record how many
5 checked off yes, do you have trouble sleeping, could they
6 not? You don't have to be a registered nurse.

7 A. But a registered nurse might not.

8 Q. A registered nurse might not be able to do
9 something that a six year old child could do?

10 A. Correct, in instance --

11 Q. Doctor, do you understand what you are saying?

12 A. I absolutely do, sir.

13 Q. That a registered nurse cannot check off the
14 persons who have marked the question, yes, I have trouble
15 sleeping when a six year old child can do it?

16 A. Yes, sir.

17 Q. And registered nurse cannot do it?

18 A. In this instance, yes. Yes.

19 Q. Is there something complicated about looking at the
20 column of yes and seeing whether it's checked, is that
21 complicated?

22 A. Yes, it is.

23 Q. How is that complicated, Doctor? Is there any
24 person that I -- that even in kindergarten -- can't read in

1 kindergarten, but --

2 A. Some kids can.

3 Q. In the third grade that would have any difficulty
4 in -- I'm now showing you Exhibit 1504, I think it is, where
5 they have a checkmark there, do you feel angry often, and the
6 checkmark is no. Would there be any problem in a six year
7 old child reading that and writing on a piece of paper,
8 putting a checkmark down here for a yes or for a no?

9 A. Might.

10 Q. And in what way, Doctor?

11 A. They might.

12 Q. In what way, Doctor?

13 A. They might check it off erroneously as she did in
14 the case of chloracne.

15 MR. CARR: Your Honor, would you direct the jury to
16 disregard the statement of Dr. Suskind?

17 THE COURT: Jury is so directed. Doctor, that
18 statement was improper. It was not responsive to any
19 question that was asked of you.

20 A. Okay.

21 THE COURT: It was a gratuitous improper remark,
22 the type of which you've made many times today. I admonish
23 you not to continue doing so.

24 A. Okay.

1 THE COURT: You've done it many times today.

2 Q. (by Mr. Carr) Doctor, there is a tremendous
3 difference between reading hospital records to determine
4 whether or not there is a current case of chloracne
5 described, and that you've just referred to, and finding out
6 whether or not there is a checkmark in a yes or a no column,
7 isn't there, sir?

8 A. No, sir, those are not hospital records.

9 Q. Isn't there a big difference in reading the
10 doctor's notes, what he wrote down as far as the acne is
11 concerned, in making the determination whether or not it is a
12 current case of chloracne or residual case of chloracne or a
13 history of chloracne? There does take some skill and
14 knowledge of interpretation there, doesn't he?

15 A. Not when it reads chloracne, pure and simple and it
16 did in those records.

17 Q. Now, Doctor, do you understand what these symbols
18 mean on this chart for chloracne?

19 A. Yes, I do.

20 Q. What do you think it means?

21 A. They -- it would mean, sir --

22 Q. What do you think the checks under the chloracne
23 column mean, sir?

24 A. That chloracne was either present or had a history

1 of.

2 Q. No. But see, Doctor, you've been misinformed.

3 A. No, I haven't.

4 Q. But indeed you have. Nurse Nicks put down only the
5 current cases of chloracne, Dr. Suskind.

6 A. That's erroneous, too, sir.

7 Q. Doctor, would you listen to me please, sir. The
8 charts reflects only current problems. Do you understand
9 that? You didn't understand that before, did you, sir?

10 A. Oh, I did indeed, sir.

11 Q. Why did you just tell me that the check means
12 current or past history?

13 A. Even if it was just current, sir --

14 Q. Why did you just tell me that, sir?

15 A. Because -- let's say --

16 Q. Why did you just tell me?

17 A. Let's take the current --

18 Q. Why did you just tell me that, Doctor, if you
19 thought the checkmark meant only current?

20 A. No matter it's either, it's wrong.

21 MR. CARR: Would you direct the witness to answer
22 my question?

23 THE COURT: Doctor, you are not responding to the
24 question. Answer the question that's asked of you.

1 A. That's what I thought it was, sir.

2 Q. Yes, you did, didn't you, Doctor. Now, Doctor, you
3 do have to do some interpretations to decide whether or not
4 what is described is a current case of chloracne, current
5 active case of chloracne or a residual problem, don't you,
6 sir?

7 A. No, sir.

8 Q. That doesn't take any discretion?

9 A. Straight forward in those charts, sir.

10 Q. That's just as easy to read?

11 A. She is all off in the current chloracne.

12 Q. You don't know because you thought these checkmarks
13 meant current and history?

14 A. No, sir.

15 Q. Didn't you just say that?

16 A. Let's say it's current --

17 Q. Didn't you just say that, sir --

18 A. Don't mix up my words, sir.

19 Q. Didn't you just --

20 A. Let's say it's current chloracne.

21 THE COURT: Doctor, the response you've made three
22 times now is not responsive to the question. Now stop making
23 that response and answer the question that's asked of you,
24 sir.

1 Q. (by Mr. Carr) Didn't you just say that you believe
2 the checkmarks represented current and residual or history of
3 chloracne?

4 A. I said that, sir.

5 Q. All right. Now, Doctor, referring to the question
6 if you will, sir --

7 A. Of chloracne.

8 Q. Doctor, if you let me finish my question. You
9 assume what I'm asking about, sir, referring to the question
10 do you believe, sir, that a nurse will have any problem in
11 discovering those who have checked no to the question do you
12 have trouble sleeping?

13 A. In this instance, yes.

14 Q. Now, Doctor, does that mean that they cannot --
15 that you believe nurses cannot read?

16 A. No, I believe she may not be able to count, sir.

17 Q. Doctor, have you counted the people who have
18 checked off the problem do you need more sleep than usual?
19 Have you done that, sir?

20 A. No, I have not, sir.

21 Q. What makes you think --

22 A. I'm using the other check areas as a way of
23 evaluating accuracy, and she is inaccurate in --

24 Q. Are you aware of the fact that she was cross

1 examined by astute counsel on each of these checkmarks on
2 this entire exhibit? Are you aware of that, sir?

3 A. I am.

4 Q. And are you aware of the fact that this exhibit
5 that you have in front of you now represents the result of
6 the cross examination that each of those checkmarks
7 represents, sir, in this column for now a symptom that the
8 people related? Are you aware of that, sir, after being
9 cross examined?

10 A. It's supposed to.

11 Q. Doctor, after being cross examined are you aware of
12 that?

13 A. It's supposed to.

14 Q. Doctor --

15 A. Doesn't have to be accurate.

16 Q. Are you aware of that?

17 A. I'm aware that this is a record of Nurse Nicks'
18 checkmarks.

19 Q. After being cross examined on it, are you aware of
20 that, Doctor?

21 A. After she was cross examined --

22 Q. Yes, Doctor.

23 A. No, I'm not aware of that.

24 Q. Now, Doctor, Mr. Heineman is a good lawyer, is he

1 not, sir?

2 A. I hope so.

3 Q. Do you think he would allow a checkmark to be on
4 there if in fact it wasn't represented by an answer in these
5 records?

6 MR. HEINEMAN: Thank you, but I didn't cross
7 examine her.

8 Q. Well, Mr. Musgrave or whoever was here, Mr.
9 Newbold, whoever might have been here. They are all
10 competent attorneys, aren't think, Dr. Suskind?

11 A. I don't care who cross examined her, sir, I don't
12 agree with this.

13 Q. Doctor, you don't agree with it. Have you checked
14 it to see whether or not these --

15 A. I don't have to, but the accuracy is written all
16 over the place.

17 Q. My question is, have you checked the records to
18 determine whether or not those checkmarks accurately reflect
19 what these people replied in responding to these questions?
20 Have you done that, sir?

21 A. Individually, no, sir.

22 Q. Yes. And you do know that counsel -- now you know
23 that counsel have cross examined on these checkmarks, you
24 know that now, don't you, sir?

1 A. So what of it? Yes, I do know, now.

2 Q. Doctor, are you aware of the fact that cross
3 examination is a tool designed, not always efficiently with
4 some people, sir, but it's designed to bring out the truth
5 and the facts of a situation? Are you aware of that, sir?

6 A. I would hope so.

7 Q. Doctor, do you believe that astute examiners would
8 have changed any checkmark that wasn't represented by the
9 fact or by the record?

10 A. I would hope he did, sir.

11 Q. Doctor, can you take it then as true, sir, that
12 each of those checkmarks in the symptom column in fact
13 reflects what one of these Krummrich workers stated?

14 A. No, I cannot, sir.

15 Q. Will you please do that, because that is the fact?

16 A. It's not the fact, sir.

17 MR. CARR: Your Honor, would you direct the witness
18 to assume that?

19 THE COURT: Doctor, you are ordered to assume that.

20 MR. HEINEMAN: Doctor -- may counsel approach the
21 bench?

22 THE COURT: Did you ask to approach the bench?

23 MR. HEINEMAN: Yes.

24 (The following Side Bar conversation was had outside the

1 hearing of the jury.)

2 MR. HEINEMAN: I object to that. I object to --
3 this only reflects the things that Mr. Carr would concede.
4 This only reflects the changes that Mr. Carr agreed to.

5 MR. CARR: And the Court found to be so.

6 MR. HEINEMAN: Doesn't reflect the things that --
7 doesn't mean that anything that Cornfeld challenged got
8 changed.

9 MR. CARR: But it did get changed if it was
10 substantial, and the Court required it to be changed.

11 THE COURT: I required those things that were
12 sufficiently challenged to be sustained, to be changed when I
13 felt they needed to be, and there was some argument about
14 their being changed. There were a number of incidents where
15 the change was conceded and I didn't have to do anything
16 about it. But -- let me finish. I did on a number of these
17 contested points on that chart that eventually produced this
18 final chart.

19 MR. HEINEMAN: Your Honor, to say -- to ask the
20 witness to assume that that's what these people said, is a
21 far cry from a situation where the Court has made a decision
22 as to whether or not a challenge has been accurate or not or
23 adequate.

24 MR. CARR: I'm not even saying that to the

1 witness. I'm asking the witness to assume that each of those
2 checkmarks represents a symptom related by a worker. That's
3 all.

4 MR. HEINEMAN: That's exactly what I'm saying. You
5 just said you weren't saying that and that's exactly what you
6 are saying.

7 MR. CARR: You are saying that they were not and
8 with the Court I'm saying that they were -- that that is --
9 you are saying the record isn't correct. The record is
10 correct.

11 MR. HEINEMAN: I'm objecting to it, Judge, on the
12 grounds that I believe the record is not correct and it was
13 challenged, and there were rulings made by the Court with
14 respect to those challenges, and I don't think it's correct
15 to ask this witness to assume that this record is correct or
16 not after cross examination. It's fine now --

17 THE COURT: It is proper. Your objection is
18 overruled. I'll take it as a continuing objection.

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

20 Q. (by Mr. Carr) Doctor, if the symptoms are
21 correctly recorded that would -- that would show that 83 out
22 of 108 have one or more such complaints of these symptoms,
23 isn't that correct, sir?

24 A. If they are accurately recorded.

1 Q. Yes, and Doctor then that's the situation, sir,
2 that is something that indeed you would indicate a toxic
3 substance affects, would it not, sir?

4 A. No, sir.

5 Q. Doctor, have you not agreed that these problems are
6 problems that can be caused by toxic substance?

7 A. No, sir.

8 Q. I thought you had, Doctor.

9 A. Not in this instance, sir.

10 Q. Doctor, disregard this particular instance.
11 Haven't you agreed that these questions that you've asked of
12 these people can be caused by the symptoms, the clinical
13 effects can be caused by toxic substances, didn't you agree
14 to that, Doctor?

15 A. Might, yes, they can.

16 Q. Yes, Doctor. And, Doctor, if they can be caused by
17 toxic substances and you have 77 percent of the people that
18 have one or more clinical effects, wouldn't that be
19 significant to you as a toxicologist if that were true?

20 A. No, sir.

21 Q. That would not be significant to you?

22 A. Oh, no, sir.

23 Q. Doctor, did you make any statement in your report
24 that this finding even existed?

1 A. No, we did not, sir, because we didn't think it was
2 significant.

3 Q. All right. Doctor, but you didn't mention it, did
4 you, sir?

5 A. We did not indeed.

6 Q. Now, you have not told anybody in the world of this
7 fact, have you, sir, that 77 percent of the workers at
8 Krummrich have one or more of these clinical effects, have
9 you, sir?

10 A. We have not put it in the report, sir, because they
11 are not significant.

12 Q. And, Doctor, have you told the world that 60
13 percent of your workers at Krummrich have abnormal lipids?

14 A. They do not, sir, have 60 percent, because in this
15 instance they are either low or high, and you can't make a
16 judgment on that, sir.

17 Q. Doctor, does the laboratory report whether they are
18 high or they are low? Is there a range for lipids, sir?

19 A. There is and one has to interpret it, sir.

20 Q. And, Doctor, have you told the world that 56 or 60
21 percent, I forget what the figure is now, of your workers at
22 Krummrich have abnormal lipids?

23 A. They did not, sir, they did not. 60 percent did
24 not have abnormal lipids. This is poppycock.

1 Q. What was the percentage then, Doctor?

2 A. The percentage is actually recorded --

3 Q. What percentage of people had abnormal lipids,
4 whether they were high or they were low, Doctor, as reported
5 by METPATH, the laboratory that you selected to analyze their
6 lipids?

7 A. We have recorded that in our summary, sir.

8 Q. And what percent of people, sir?

9 A. It's not as percentage, it's the comparison of the
10 people with or without chloracne, sir.

11 Q. I know, Doctor, you are comparing exposed to
12 exposed, but my question is what percentage of the workers at
13 Krummrich have abnormally low or abnormally high lipids as
14 recorded by METPATH?

15 A. These are reported in these tables, sir, and if
16 you'd like me to go through them --

17 Q. Yes, that's what I'd like for you to do, sir.

18 A. Okay.

19 MR. HEINEMAN: Excuse me, Your Honor, may counsel
20 approach the bench?

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

23 MR. HEINEMAN: I think that question just sank in
24 on me, Judge. Did I understand Mr. Carr to ask him what

1 percentage of the workers at Krummrich had --

2 MR. CARR: These workers. We are talking about
3 these workers.

4 MR. HEINEMAN: I wanted to be sure.

5 THE COURT: I think he said these.

6 MR. HEINEMAN: I want to be sure the question was
7 so restricted.

8 MR. CARR: If it weren't, I'm talking about this
9 study.

10 THE COURT: I think it was restricted these
11 workers.

12 MR. HEINEMAN: I just wanted to be sure that's the
13 import of the question.

14 THE COURT: Sure.

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

16 Q. (by Mr. Carr) What percentage, Doctor?

17 A. We haven't lumped them together because that would
18 be foolish, so --

19 Q. I didn't ask you whether or not it would be
20 foolish, I asked you whether or not you have reported to the
21 world the number of workers in this study at your Krummrich
22 plant who have abnormal lipids as reported by METPATH?

23 A. We haven't reported anything to the world, sir.

24 Q. What have you reported to Monsanto, Doctor? What

1 have you reported to the worker?

2 A. As well as to you, sir.

3 Q. What have you reported to the union?

4 A. As well as to you, we have reported to you, sir,
5 total lipids.

6 Q. Doctor, my question is, how many workers in this
7 study have abnormal lipids? What's the percentage of the
8 number of workers who have abnormal lipids?

9 A. We haven't lumped them together, sir, and it would
10 be erroneous to do so.

11 MR. CARR: Your Honor, would you ask the jury to
12 disregard the last statement?

13 THE COURT: The jury is so ordered. It was not
14 responsive to the question. It was an improper statement.
15 Jury is ordered to disregard it. Doctor, quit making
16 statements that are not responsive to the question. Mr.
17 Carr, could you repeat the question again?

18 Q. (by Mr. Carr) Doctor, have you looked at Exhibit
19 1507a in which it does have a checkmark for each lipid? It's
20 the second column from the right as you look at the document,
21 sir, it has a checkmark for each abnormal lipid. Have you
22 checked it, sir?

23 A. Have I checked this against the records?

24 Q. Yes.

1 A. No, sir.

2 Q. Do you believe that a registered nurse should be
3 competent to look at a laboratory report and determine
4 whether or not the value is or is not abnormal in that
5 laboratory report?

6 A. All depends upon what instruction she is given.

7 Q. If she is told to look at the laboratory report,
8 and if the laboratory reports has abnormal, to put a
9 checkmark down if she is told that?

10 A. Does she know what abnormal is?

11 Q. Excuse me, does the reference range as set out --
12 does the laboratory put a check -- does it in fact set out
13 those abnormal results?

14 A. They have to be interpreted.

15 Q. Excuse me, Doctor, I'm not asking to interpret it.
16 I'm asking whether or not a registered nurse is competent to
17 look at the lab report and determine whether or not the lab
18 reported that the lipids to be normal or abnormal? Is a
19 registered nurse competent to do that, sir?

20 A. Not altogether, no.

21 Q. What is their about that that a registered nurse
22 cannot do?

23 A. A registered nurse would have to know that an
24 outside -- let's say triglyceride --

1 Q. Doctor, my question --

2 A. May I finish my answer, sir?

3 MR. HEINEMAN: Objection.

4 A. Don't ask me another question until I'm finished.

5 (At this point the Judge struck the desk with his fist, and
6 the following proceedings were had).

7 THE COURT: Doctor, I'm the one that determines
8 that, not you. You are not the judge in this case, not one
9 of the attorneys, and you do not abrogate to yourself the
10 power to tell either of these attorneys what they can or
11 cannot ask of you.

12 A. I apologize.

13 THE COURT: You are a witness in this case. You
14 will do what is told to you by both attorneys. Do you
15 understand that, Doctor?

16 A. Yes, sir.

17 THE COURT: Now, you've told me a number of times
18 that you understand it. This time for a change I would like
19 you to follow what you claim you understand.

20 A. Okay.

21 THE COURT: Respond only to what counsel, both
22 counsel, ask of you, Doctor.

23 MR. HEINEMAN: Your Honor, may I interpose an
24 objection that the witness' answer was interrupted.

1 THE COURT: The witness' non-responsive answer was
2 properly interrupted. Overruled.

3 Q. (by Mr. Carr) I'll show you part of Exhibit 1504,
4 you recognize that as the part of the METPATH report, did you
5 not, sir? Do you, sir?

6 A. That would be the METPATH report, sir.

7 Q. Doctor, do you see a line there where it says --
8 category where it says test results outside established
9 reference range? Do you see that, sir?

10 A. I do.

11 Q. And, Doctor, do you see a line that says
12 triglycerides?

13 A. Yes.

14 Q. Did you see it in the section called test results
15 outside established reference range?

16 A. That's right.

17 Q. And could you read that and could anybody read
18 that, Doctor, including a registered nurse?

19 A. That particular one, I would hope so.

20 Q. Doctor, would you expect a registered nurse to be
21 able to read the words that triglycerides are outside as a
22 test result, that outside the established reference range?

23 A. I would hope so.

24 Q. Would you even have to be a registered nurse to be

1 able to read that?

2 A. No, you could be a good technician and do that.

3 Q. Doctor, you don't even have to be a technician, you
4 can read the English language because it clearly sets it out,
5 doesn't it, Doctor, right there?

6 A. Has to be interpreted.

7 Q. Doctor, I'm not asking for interpretation and you
8 know I'm not asking for interpretation. I gave you as a
9 predicate that she was instructed to go through these reports
10 and put down where the laboratory reported it to be abnormal.

11 MR. HEINEMAN: Objection, Your Honor, counsel
12 approach the bench?

13 THE COURT: Yes, you may.

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

16 MR. HEINEMAN: That question to the witness
17 contains an outright fabrication. The direction to the nurse
18 was to put down whether it was outside the reference range.

19 MR. CARR: That's right.

20 MR. HEINEMAN: Not whether it's normal or abnormal,
21 and that's a big difference. That's what the doctor is
22 talking about in terms of interpretation.

23 MR. CARR: I'll certainly accept that, Counsel, if
24 that's the way you interpret what I said.

1 MR. HEINEMAN: Why don't you put it in the
2 question?

3 THE COURT: Fine.

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

5 Q. (by Mr. Carr) Doctor, the nurse was instructed to
6 go through and pick out the ones that the laboratory reported
7 to be outside established reference ranges, that was her
8 instructions. Now, she could do that and any person could do
9 that, couldn't they, sir? Doctor, you are looking at the
10 wrong exhibit.

11 A. She might be able to do that, but that's not
12 abnormal lab report, sir.

13 Q. Doctor, didn't ask you that, did I, sir?

14 A. Yeah, but that's what is checked off.

15 Q. Excuse me. Did I ask you that? I asked you
16 whether or not anybody could go through these records and
17 pick out what the laboratory says is outside the established
18 reference range.

19 A. Not anybody, somebody that knows something about
20 it, sir.

21 Q. Doctor, what do you have to know to be able to read
22 that, sir?

23 A. May I have this?

24 Q. It says test results outside established reference

1 ranges, doesn't it, sir?

2 A. This would also reflect low triglycerides. If that
3 were low then it wouldn't be abnormal, sir, it would be
4 outside the reference range, but not abnormal.

5 Q. Doctor, there is no quarrel with that.

6 A. Well, there is --

7 Q. My question to you --

8 THE COURT: Doctor -- Doctor, listen to the
9 question. Respond to the question.

10 Q. My question to you, sir, is anyone can read that
11 exhibit and write down what it says, can't they, sir, that
12 lab report?

13 A. Which exhibit are you talking about, this one?

14 Q. I am. The lab report.

15 A. Anybody who knew what outside the reference range
16 meant, yes.

17 Q. Doctor, they don't even have to know that because
18 the laboratory --

19 A. Yes, they would.

20 Q. Because the laboratory says these are results
21 outside the established reference range, don't they, sir?

22 A. That's what the lab -- but you have to know
23 something about lab reports.

24 Q. Now, Doctor, do you think it unusual or strange

1 that 60 people, that is 56 percent, would have lipids outside
2 the established normal reference ranges?

3 A. If it were absolutely true, yes.

4 Q. Yes, it's true.

5 A. If it were true, and in this case --

6 Q. Doctor, would that indicate, sir, a possible
7 exposure to toxic substances?

8 A. No, sir.

9 Q. If it were true?

10 A. No.

11 Q. Doctor, wouldn't 56 percent of the given population
12 that have abnormal lipids, wouldn't that be passing strange?

13 A. No.

14 Q. You don't think so, Doctor? What percent of the
15 population?

16 A. It would be strange if it were accurate, and I
17 can't believe it's accurate.

18 A. I gave you the predicate assume that it's
19 accurate.

20 A. It's not accurate, sir, and you know it.

21 Q. Would you assume --

22 MR. CARR: Your Honor, would you ask the jury to
23 disregard what the witness has said and also instruct him to
24 assume the predicate that I gave him that it was an accurate

1 report.

2 THE COURT: I will. Doctor, you are to assume that
3 it is accurate. I think I ordered you to assume earlier that
4 -- no, I didn't.

5 A. That's something else.

6 THE COURT: It was my mistake. You are ordered to
7 assume that it is accurate for purposes of this question.
8 Ladies and gentlemen of the jury, the response that the
9 doctor made about accuracy was an improper remark. It is to
10 be disregarded by you.

11 Q. (by Mr. Carr) Doctor, if it is accurate, it would
12 be indeed passing strange, would it not, sir?

13 A. If it were accurate one would have to --

14 Q. Let me finish, please. Let me finish my question,
15 please, sir. The 56 percent of the population to have
16 abnormal lipids?

17 A. If it were accurate, it would be strange, sir, yes.

18 Q. And, Doctor, is that the kind of an effect that you
19 would expect from exposure and other absorption to toxic
20 substances, to certain kinds of toxic substances?

21 A. Certain kinds of toxic substances, yes.

22 Q. Yes.

23 THE COURT: Mr. Carr, you at a point where we can

24 --

1 MR. CARR: Yes, Your Honor.

2 THE COURT: Ladies and gentlemen, we will recess --
3 adjourn for the day at this time. We will resume again
4 tomorrow morning at 9:30. I would remind you, as I do on any
5 overnight break, that you are not to discuss this matter
6 among yourselves, with anyone outside the jury panel or as of
7 yet form any opinions or conclusions about the matters on
8 trial. Further, you are not to read, listen to, or watch
9 anything about this case in particular, or subject matter in
10 general in any of the media.

11 Thank you for your attention and your cooperation.
12 Court is adjourned.

13 COURT ADJOURNED:
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1 STATE OF ILLINOIS)
2 TWENTIETH JUDICIAL CIRCUIT) SS
3 COUNTY OF ST. CLAIR)
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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 9 day of April, 1986.
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STATE OF ILLINOIS)
)
TWENTIETH JUDICIAL CIRCUIT) SS
)
COUNTY OF ST. CLAIR)

I, RICHARD P. GOLDENHERSH, one of the Judges in and
for the Twentieth Judicial Circuit, do hereby certify that I
have examined the aforesaid transcript of proceedings, and
certify the foregoing to be a true and accurate transcript of
the testimony and proceedings in the above-styled cause.

Dated this _____ day of April, 1986.

HON. RICHARD P. GOLDENHERSH

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

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

8
9
10 REPORT OF PROCEEDINGS

11 Before the HON. RICHARD P. GOLDENHERSH

12 JURY TRIAL

13 April 3, 1986
14

15 APPEARANCES:

16 Mr. Rex Carr
17 Mr. Jerome Seigfreid
On Behalf of the Plaintiffs;

18 Mr. Kenneth Heineman
19 Mr. Joseph Nassif
Mr. James Craven
On Behalf of the Defendant.

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21
22
23 Debra M. Musielak, CSR, CM
24 Official Court Reporter

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EXHIBITS

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EXHIBITS SUBMITTED ON BEHALF OF THE PLAINTIFF

Plaintiff's Exhibit No.:		
1808	(report)	.106 145

EXHIBITS SUBMITTED ON BEHALF OF THE DEFENDANT

Defendant's Exhibit No.:		
917		 100

1 BE IT REMEMBERED, that on the 3rd day of April,
2 1986, the same being one of the regular judicial days of said
3 court, the above-styled cause came on regularly for hearing
4 before the HONORABLE RICHARD P. GOLDENHERSH, one of the
5 Judges at the St. Clair County Building, 10 Public Square, in
6 the City of Belleville, County of St. Clair, State of
7 Illinois. Whereupon the following proceedings were had:

8 COURT CONVENED:
9

10 DR. RAYMOND SUSKIND

11 (being called as a witness on behalf of the Defendant, having
12 been previously sworn, having resumed the stand, continued to
13 testify as follows)

14 CROSS EXAMINATION

15 BY MR. REX CARR

16 Q. Dr. Suskind, have you had an opportunity to read
17 Plaintiff's Exhibit 1807, that is the one made by the doctors
18 from the Neurological Institute at Milan, Italy?

19 A. I have, sir.

20 Q. Doctor, this refers to studies they conducted of
21 people who had been reportedly exposed at Seveso and they
22 compare it to a control group of a non-exposed population
23 living in an unpolluted area, correct, sir?

24 A. Yes, according to this report, sir.

1 Q. And, Doctor, they point out that it was -- the
2 study itself was suggested because it had been reported among
3 other things that these kind of serum enzyme hepatic levels
4 were reported to have been increased apparently from Dr.
5 Marion Moses in the -- on the first page so indicates, does
6 it not, in people that have been exposed to TCDD
7 occupationally?

8 A. I believe they have eleven quotations, not just
9 Marion Moses.

10 Q. That's fine, Doctor.

11 A. They have eleven notations.

12 Q. To the effect that one of the long-term effects
13 would be raised levels of cholesterol, triglyceride,
14 gamma-glutamyl, transpeptidase, that is they have it down
15 here GT, glutamic oxalacetic transaminase, GOT, and glutamic,
16 can't read that, pyruvic transaminase, GPT, correct, sir?

17 A. Yes, I understand it, sir.

18 Q. And, Doctor, they went on to say in addition, "The
19 rate of reported congenital anomalies in men fathering at
20 least one child after service in Viet Nam was nearly twice as
21 high among those with recurrent acne, skin rash with
22 blisters, and skin color changes consistent with conditions
23 thought to result from exposure in dioxin-contaminated
24 substances as among those without them." They also state

1 that, don't they, sir --

2 A. They are quoting from Stillman and Stillman, sir.

3 Yes.

4 Q. This is what they state in the preparatory
5 introductory portion of their paper, do they not?

6 A. Among other things, they state that, sir.

7 Q. They go on to say that for men with those
8 indicators of exposure, and by that they are referring to the
9 skin conditions, "greater frequencies have also been reported
10 for gastrointestinal disturbances, swelling or numbness of
11 joints, and sleep and psychological disturbances," is that
12 also correct, sir?

13 A. Yes, that's again from Stillman and Stillman.

14 Q. And they state at that time that, "These previous
15 findings," that is all that we have thus far mentioned,
16 prompted them to compare the prevalence rate of peripheral
17 neuropathy in exposed subjects with chloracne or increased
18 GPT, GOT and GPT activities with that found in exposed
19 subjects without those manifestations in a population living
20 in a dioxin-polluted area in the Seveso region of Italy, is
21 that also correct, sir?

22 A. That's a statement from the report, yes.

23 Q. And, Doctor, what they did then was to -- according
24 to this document, was to measure the enzyme activities which

1 were -- what they did, they considered it, and I'm reading
2 now on page -- I can't make out, Page 259, they recorded
3 where they were increased enzyme activities in the GT was
4 above 50 micrograms per liter, normal range was up to 36,
5 also where the GOT was above 50, normal range up to 26, and
6 GPT was above 50 when normal range was up to 32, is that also
7 stated there, Doctor?

8 A. Yes, I believe that is the way it's stated in that
9 report.

10 Q. And then, Doctor, they found through a statistical
11 analysis the prevalence rate -- ratio of peripheral
12 neuropathy as calculated for the Seveso subjects with
13 chloracne or raised serum hepatic enzyme levels as opposed to
14 Seveso subjects without them, is that correct, sir? This is
15 this paragraph I'm reading on Page 259, right under the
16 paragraph that says increased enzyme activities?

17 A. Yes, I believe that's how it's stated in the
18 report, sir.

19 Q. And, Doctor, where they are here and thereafter in
20 this report talking about serum hepatic enzyme levels, they
21 are referring to the GT, the GOT and the GPT, are they not,
22 sir, that's what they mean hereafter by serum hepatic enzyme
23 levels?

24 A. I assume they are, sir.

1 Q. All right. And, --

2 A. There is no information other than that, sir.

3 Q. Well, they describe --

4 A. No table.

5 Q. They describe in the paragraph enzyme activities
6 were recorded, the GT, the GOT, and so forth, then they go
7 onto say that these raised serum hepatic enzyme levels, it's
8 the only enzymes they are talking about, is it not, sir?

9 A. Yes, but there is no numerical evidence of this,
10 sir.

11 Q. Well, I'm not asking you that, Doctor, I'm asking
12 you simply are they -- when they use the terms serum hepatic
13 enzyme levels, they are referring to the serum enzymes known
14 in their paper as GT, GOT and GPT?

15 A. I believe those are the enzymes they are referring
16 to, sir.

17 Q. And we customarily put the letter S in front of
18 those letters, don't we, sir, so that reads SGOT, and SGPT?

19 A. Yes.

20 Q. So they are talking, when they say GOT, they are
21 talking about what we call SGOT?

22 A. Yes.

23 Q. The S probably standing for serum?

24 A. But not GPT, it would be GGPT.

1 Q. GGPT, all right.

2 A. Yeah.

3 Q. All right. So any event, Doctor, what they have
4 done here is look at the people that have chloracne or the
5 people that have raised serum hepatic enzyme levels and
6 comparing that to peripheral neuropathies, isn't that
7 correct, sir? That paragraph that we just referred to makes
8 that clear, doesn't it, Dr. Suskind?

9 A. No, I wish I could be as sure as you are, sir. I'm
10 not sure I understand from this paper, which is not well
11 written, as you recognize, what --

12 Q. As what, Doctor?

13 A. What the PR --

14 Q. As what? I didn't hear what you said.

15 A. I said I'm not altogether sure I understand what
16 that PR is.

17 Q. I heard that,, but then you added something. Your
18 voice dropped. You indicated --

19 A. It isn't easy to understand this paper from my
20 standpoint.

21 Q. Yes, but you added something to it indicating that
22 I recognize something. What was it that I recognize?

23 A. Well, I said I thought that you would also
24 recognize it's not easy to understand, sir.

1 Q. Well, but you -- I thought you said I recognize
2 it's not well written, and I don't recognize that it's not
3 well written.

4 A. Well, then okay, I recognize it's not well written
5 because it's not easy to understand.

6 Q. I thought that's what you said, Doctor. Now,
7 Doctor, this document, to get back to this paragraph, so that
8 we can agree on the meaning of it, regardless of what you
9 think about the article --

10 A. Okay.

11 Q. So that we can agree on what it says.

12 A. Sure.

13 Q. They are comparing peripheral neuropathies in
14 people who have either raised serum hepatic levels or
15 chloracne with people who do not have such serum raised
16 levels or chloracne, are they not, sir? They are trying to
17 determine whether or not people with chloracne or raised
18 serum hepatic levels have more peripheral neuropathis than
19 people who do not have chloracne or raised serum hepatic
20 levels, isn't that correct, Dr. Suskind?

21 A. No, that's not completely accurate, sir.

22 Q. Well, what else --

23 A. They also have another group which they use, sir,
24 and that is the -- that first group of subjects who are

1 alcoholics or occupationally exposed to neurotoxic agents or
2 persons with pre -- with diseases predisposing to peripheral
3 neuropathy, so they use that group also as a comparison
4 group?

5 Q. Yes, what they do is they compare prevalence of
6 peripheral neuropathies in the people with such predisposing
7 factors --

8 A. Yes.

9 Q. And to people who do not have such predisposing
10 factors, isn't that correct, sir?

11 A. And I believe they also --

12 Q. Excuse me, isn't that correct?

13 A. Compare their enzyme levels.

14 Q. Isn't that correct?

15 A. Plus their enzyme levels.

16 Q. Yes, and Doctor what they are doing there, they are
17 trying to take out or account for, or to demonstrate what
18 could be called confounding factors, that is people who are
19 predisposed to such conditions as peripheral neuropathies,
20 correct, sir?

21 A. That would be probably one way to do it, sir.

22 Q. Because earlier we read a document where you
23 pointed out and the authors pointed out, as a matter of fact,
24 that there was no control group and they did not take into

1 account Dr. Menlow's paper, if you recall, where he was
2 talking about studies of peripheral neuropathies among the
3 ICMESSA workers and others, where it was not taken into
4 account these predisposing factors such as alcohol and
5 diabetes and so forth. Now, this paper takes that into
6 account, does it not, sir?

7 A. I believe it does.

8 Q. All right. Now, Doctor, they point out in their
9 discussion section that it is evident from the preceding
10 results that a very high prevalence of peripheral neuropathy
11 was observed among subjects who showed indicators of heavy
12 exposure to dioxin, 12 out of 55, that is 22 percent, and
13 this prevalence was almost three times greater than that of
14 subjects who did not show these indicators, isn't that
15 correct, sir?

16 A. Did I read that statement correctly, sir, beginning
17 on Page 260 over to Page 261, sir?

18 A. You read it correctly, sir.

19 Q. Thank you, sir. They also point out that chloracne
20 in their study, during the monitoring, it was found only in
21 the young age group, that is up to 20 years of age, correct,
22 sir?

23 A. That's what they indicated.

24 Q. They also say that the frequency of neuropathic

1 signs for that group was very low, did they not, sir?

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

3 Q. And then Doctor, in the Table 3 on Page 260, they
4 compare the prevalence of the peripheral neuropathy in Seveso
5 subjects with chloracne or abnormal hepatic enzyme levels in
6 1978, do they not, sir?

7 A. They have stated that they have done this, sir,
8 yes.

9 Q. And, Doctor, in the table itself, they point out
10 that of the people in the group that have abnormal hepatic
11 enzyme levels, they found 6 out of 18 who had peripheral
12 neuropathy, did they not, sir?

13 A. Yes.

14 Q. Now, that 6 out of 18 would be one-third of the
15 subjects had raised or abnormal hepatic enzyme levels, isn't
16 that correct, sir?

17 A. Yes.

18 Q. Then they compared the chloracne group, they found
19 six cases of peripheral neuropathy in the chloracne group,
20 did they not, out of a total of 24?

21 A. Six cases of what, sir?

22 Q. Peripheral neuropathy in the chloracne group?

23 A. That's how it's reported in this table, sir.

24 Q. So they found in the chloracne group six cases of

1 peripheral neuropathy out of 24 total subjects, correct, sir?

2 A. That's what they say, sir.

3 Q. That would be one-fourth of that group in the
4 chloracne group had peripheral neuropathies, correct, sir?
5 6 is one-fourth of 24, is that correct, sir?

6 A. That's correct.

7 Q. So in the group that have abnormal enzyme levels,
8 one-third of those people had peripheral neuropathies as
9 opposed to one-fourth of the group with chloracne, isn't that
10 correct, sir?

11 A. No, that's why I can't understand what they are
12 really talking about.

13 Q. Isn't that what the figures show?

14 A. No, it does not, not to me.

15 Q. Doctor, did they find six cases of -- actual cases
16 of peripheral neuropathy in the chloracne group? And do they
17 not say total subjects his in that group was 24?

18 A. They did, but I don't understand the figure, sir.

19 Q. Doctor, 6 is one-fourth of 24, sir?

20 A. That's not what I'm talking about.

21 Q. 6 is one-fourth of 24?

22 A. It is indeed, but that's not what I'm talking
23 about.

24 Q. Doctor, but the question I'm asking you, sir, they

1 found 25 percent in the chloracne group having peripheral
2 neuropathy, they found one-third in the abnormal hepatic
3 enzyme groups as having peripheral neuropathy, do they not,
4 sir?

5 A. I'm not sure, sir.

6 Q. Well, Doctor, isn't 6 one-third of 18?

7 A. According to your figures, sir, yes.

8 Q. It's not my figures, I asked you and you agreed
9 that six persons with abnormal hepatic enzymes levels out of
10 18 were found to have peripheral neuropathy and you agreed to
11 that, did you not, sir?

12 A. What I don't understand, sir --

13 Q. Excuse me. My question is did you not agree to
14 that, sir?

15 A. What you have said --

16 Q. Excuse me, Doctor.

17 A. In the numbers you have said is correct from this
18 paper.

19 Q. All right.

20 A. But --

21 Q. Doctor, that's what I'm asking you is about this
22 paper.

23 A. People with abnormal hepatic --

24 Q. Doctor, I've asked you the question and you've

1 answered the question.

2 A. I have answered the question, but I have not
3 answered it accurately, sir. That's what I'm saying, my
4 question --

5 Q. Doctor --

6 A. My answer is not accurate.

7 Q. Doctor, is it accurate that one-third of the group
8 with abnormal hepatic enzyme levels had peripheral neuropathy
9 according to this table?

10 A. I don't know, sir.

11 Q. Doctor, didn't you say that a moment ago, sir?

12 A. According to this table, but I don't understand
13 this table.

14 Q. Doctor, that's what I'm asking.

15 A. I don't understand this table, sir.

16 Q. Doctor, what I'm asking you about is according to
17 this table.

18 A. According to this table, taking it at face value,
19 that's so.

20 Q. Yes?

21 A. But it's not accurate, sir?

22 A. That's what I'm saying.

23 Q. Doctor, taking at face value the chloracne column,
24 6 out of 24 having chloracne had peripheral neuropathy, isn't

1 that correct, sir?

2 A. According to this table, taking it at face value.

3 Q. So, Doctor, a greater -- taking this table at face
4 value, a greater percentage of the people having abnormal
5 hepatic enzyme levels also had peripheral neuropathies than
6 the group with chloracne, isn't that correct, sir?

7 A. Only taking it at face value. Scientists don't
8 take it at face value.

9 Q. Is that a yes to my question, sir?

10 A. No, it's not a yes, sir.

11 Q. It's not a yes?

12 A. It's I don't understand this --

13 Q. Doctor, my question --

14 A. I don't understand this table, sir.

15 THE COURT: Doctor, restrain yourself, please. Let
16 counsel finish the question and then please change to the
17 behavior of answering only the question that's before you and
18 not injecting things that are not included in the question.
19 You may proceed, Mr. Carr.

20 Q. (by Mr. Carr) Doctor, and don't they go on to
21 conclude on the next page, the last sentence in the paragraph
22 that begins at the top of the page, in the lefthand column,
23 do they not say -- last two sentences, "In fact, the PRR of
24 neuropathy for the subjects under 20 a of an age with

1 chloracne versus those without it reached 4.7, that is 95
2 percent CL 1.2 - 18.1, a value greater than the one observed
3 in the chloracne subjects of all ages. In contrast, since
4 abnormal hepatic enzyme levels were more common in the adult
5 age group, their association with peripheral neuropathy may
6 not be so unusual." Aren't they saying that, sir?

7 A. That's what this report says, sir.

8 Q. And, Doctor, raised hepatic enzyme levels or
9 abnormal hepatic enzyme levels is a clinical effect, is it
10 not, sir?

11 A. I cannot answer that question yes or no, sir.

12 Q. Doctor, in the table that you referred to, you do
13 call, do you not, sir, raised SGOT and GPT just like they are
14 talking about?

15 A. With respect to TCDD.

16 Q. My question is do you not state that those are
17 clinical effects from exposure to TCDD?

18 A. The abnormal enzyme --

19 Q. Laboratory effects?

20 A. They are called laboratory findings, sir, read it.
21 Read it.

22 Q. Yes, Doctor --

23 A. Laboratory findings.

24 Q. Have we not agreed that laboratory findings

1 indicate an effect in existence, did you not agree that
2 laboratory findings and laboratory effects were equivalent
3 words?

4 A. In a general way, sir.

5 Q. Yes, Doctor.

6 A. Only in a general way. That refers to TCDD, sir,
7 this does not.

8 Q. This does refer to TCDD, does it not?

9 A. It sure does.

10 Q. Doctor, this document refers to the people who were
11 exposed to TCDD at Seveso, living in the polluted areas where
12 they measured and found it in the soil, isn't that --

13 A. Only one group.

14 Q. May I finish my question please, sir? Isn't that
15 correct, sir, that this document deals with TCDD as well,
16 sir?

17 A. One group was exposed. There were three groups and
18 the control group --

19 Q. Exactly correct, Doctor, that's what I'm asking
20 you, sir, it is a laboratory effect, is it not, sir?

21 A. It's a laboratory finding, sir.

22 Q. Which is an effect, is it not?

23 A. It's an effect of what, sir? Of what?

24 MR. CARR: Your Honor, would you direct the witness

1 to answer the question and not ask me a question.

2 THE COURT: Doctor, what you just said was not
3 responsive to the question that was asked of you. Answer the
4 question, please.

5 A. It is a laboratory finding, sir.

6 Q. Have you not agreed that a laboratory finding is
7 not a laboratory effect?

8 A. No, sir.

9 Q. Didn't you just say that this moment, a few moments
10 ago, in a general way, Doctor?

11 A. In a general way.

12 Q. In a general way is not a laboratory finding
13 equivalent to a laboratory effect?

14 A. In a very general way.

15 Q. In a very general way?

16 A. Yes, sir.

17 Q. Thank you, Doctor.

18 A. In a general way.

19 Q. Now, Doctor, you of course are also familiar with
20 the Missouri Pilot Health Study, are you not, sir?

21 A. I am, sir.

22 Q. I wonder if you could give Plaintiff's Exhibits
23 1671 b, d, and f, to the witness. Doctor, have you had an
24 opportunity to see these exhibits earlier?

1 A. If this is the from the report of October 16th,
2 1983, is that it, sir?

3 Q. Yes, Doctor, based upon Monsanto's Exhibit 55 in
4 this case.

5 A. Then I have in the past --

6 MR. HEINEMAN: Objection. May counsel approach the
7 bench?

8 THE COURT: Yes, you may.

9 (The following Side Bar conversation was had outside the
10 hearing of the jury.)

11 MR. HEINEMAN: Your Honor, I object to the
12 representation 1671 b as something from that report.

13 MR. CARR: I said it was based upon it, Counsel.
14 Did you hear what I said?

15 MR. HEINEMAN: No, you said he asked you whether
16 these were all from the report, and you said --

17 MR. CARR: I said they were based upon it.

18 THE COURT: My notes indicate he said based on it
19 from Monsanto.

20 MR. HEINEMAN: I think it should be made clear to
21 the witness that 1671 b is a document created by Mr. Carr.

22 MR. CARR: It may be made clear to the witness at
23 an appropriate point in time. I'm asking him now whether or
24 not he's familiar with the documents.

1 THE COURT: Objection is overruled.

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

3 Q. (by Mr. Carr) Doctor, are you familiar with these
4 documents?

5 A. With this as such, sir, no, I am not. I would have
6 to refer to the original report which I have on my desk --

7 Q. Doctor, my question --

8 A. I will verify it if you want me to.

9 Q. Doctor, my question is simply have you seen these
10 documents before, sir?

11 A. I have seen these documents before, sir. I've read
12 them thoroughly.

13 Q. That's what I'm asking you.

14 A. But not this, sir.

15 Q. Doctor, my question have you seen documents 1671 b,
16 d, and f before?

17 A. Not as such, sir.

18 Q. All right, then, Doctor, have you seen 1671 before,
19 sir?

20 A. No, sir, not as it's written here, sir.

21 Q. Doctor, you are holding up the wrong thing. That
22 is -- here is 1671, Doctor, right there. Doctor, are you
23 satisfied that 1671 is a part of Monsanto Exhibit 55, the
24 Missouri Pilot Health Study report?

1 A. I didn't know it was a Monsanto exhibit, but I do
2 have familiarity with that Missouri dioxin health studies
3 report, sir.

4 Q. That isn't my question, Doctor. Are you satisfied
5 that Plaintiff's Exhibit 1671 is part of the Missouri Pilot
6 Health Study report, sir?

7 A. Yes, it is, sir.

8 Q. Thank you, Doctor. Now, Doctor, the exhibit shows,
9 does it not, sir, that the number of persons having chronic
10 hepatic porphyria among the group studies in the Missouri
11 Pilot Health Study?

12 A. That is how it's reported in this study, sir.

13 Q. And Doctor, is chronic hepatic porphyria a clinical
14 or laboratory effect, sir?

15 A. In this instance, it is not a clinical effect, sir.

16 Q. Doctor, my question to you, sir, does not relate to
17 this instance. My question is, sir, is chronic hepatic
18 porphyria a clinical or laboratory effect, sir?

19 A. It is a clinical effect, sir.

20 Q. And, Doctor, do you have Exhibit 1671 d, in front
21 of you, sir? It's generalized disorders under the Missouri
22 Health Study?

23 A. Yes, sir.

24 Q. And, Doctor, it states, does it not, sir, under the

1 condition persistent headaches that a total of 38 percent of
2 the groups studied showing persistent headaches? Do you see
3 that, sir? Do you see that, Doctor?

4 A. Where is this from?

5 Q. Doctor, would you answer my question, please,
6 Doctor?

7 A. I see it on your version of what is in this report,
8 sir.

9 MR. CARR: Your Honor, would you direct the jury to
10 disregard what the witness said?

11 THE COURT: Doctor, that was not responsive to the
12 question. The jury is ordered to disregard it. Please
13 respond to the questions that are asked.

14 MR. HEINEMAN: Objection, Your Honor.

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

17 MR. HEINEMAN: Your Honor, Mr. Carr is trying to
18 lead the jury to believe that what this thing is, is
19 something straight out of the report, and the witness --

20 MR. CARR: Pure nonsense.

21 MR. HEINEMAN: The witness is saying I have in
22 front of me the thing that you have interpreted from the
23 report, which is exactly right. This is --

24 THE COURT: Keep your voice down.

1 MR. HEINEMAN: This is a document Mr. Carr created.
2 by taking the controls in the exposed and putting them
3 together. That was our objection to this whole thing the
4 first time it was used. And that's what he's doing here.
5 And the witness is correctly stating this document is your
6 interpretation of what's in the paper, and that's exactly --

7 MR. CARR: As a matter of fact, this document is an
8 interpretation of the witness that was on the stand on the
9 2nd -- is the date of that?

10 THE COURT: 12-2-85.

11 MR. CARR: 12-2-85, that was Dr. Dost or Kilgore,
12 one of the two at that time. It was admitted after
13 examination of that witness, and the point that counsel is
14 making is not the point that I'm making with the jury, and
15 I'm not asking him anything about whose this is. I'm asking
16 him if he sees these numbers on this and he says, yes, I see
17 this on your exhibit. He doesn't know that it's my exhibit.
18 He doesn't know it's Kilgore's exhibit. He doesn't know that
19 it's Dost's exhibit. He's making charges -- volunteering
20 this beyond the scope of my question and that's what I'm
21 objecting to.

22 THE COURT: Did you get a chance to talk to the
23 witness?

24 MR. HEINEMAN: Certainly.

1 THE COURT: Well, I'm noticing this morning that it
2 doesn't seem to have much effect. What he has said was not
3 responsive to the question. What he said was totally
4 irrelevant to the question. There has been no implication
5 made as you've stated. As I stated before ruling in your
6 other motion, the question was asked of him about these three
7 documents as their being based on, which is different from
8 being from -- your objection is overruled on both grounds.
9 It was not responsive to the question, and there is no such
10 implication made that you are objecting to. So it's
11 overruled on both grounds.

12 MR. HEINEMAN: My point, Your Honor, is I believe
13 that the answer was exactly responsive to the question, and I
14 would also object to Mr. Carr -- you mind facing the Judge
15 here? You want to look at the jury?

16 MR. CARR: I'm looking at you, Counsel, do you
17 understand?

18 MR. HEINEMAN: Terrific.

19 MR. CARR: Do you understand? You are speaking.
20 When you spoke you looked at me, didn't you, Counsel? I'm
21 watching you speak.

22 MR. HEINEMAN: I was looking at the Judge.

23 MR. CARR: I'm watching you, Counsel.

24 MR. HEINEMAN: Marvelous. -- with what Dr. Kilgore,

1 was forced to assume and what was extracted from him under
2 those orders that he was forced to assume is a totally unfair
3 representation by Mr. Carr that this is something that was
4 adopted by Dr. Kilgore, and that's inaccurate, and I object
5 to that representation as well.

6 THE COURT: I have a memory of Dr. Kilgore's
7 ability to testify to what he testified to two minutes
8 before. Your objection is overruled.

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

10 Q. (by Mr. Carr) Doctor, have you been told the
11 background of these exhibits? The one I'm referring to now,
12 1671 d, have you, sir?

13 A. Have I been told what, sir?

14 Q. The background of Exhibit 1671 d?

15 A. What do you mean background, sir?

16 Q. Do you know its origin? Have you been told by
17 counsel how this came into existence?

18 A. Sir, this is the first time I've ever seen these.
19 I have no idea.

20 Q. If it's the first time you've ever seen these, why
21 would you say that it's my report?

22 A. Because I can't find them in here, sir.

23 Q. My question is could it be Dr. Kilgore's report?
24 Could it be Dr. Carnow's report? Could it be Dr. Dost's

1 report? Could it be Dr. Silbergeld's report? It could be
2 anybody's report.

3 A. That wouldn't matter to me, sir.

4 Q. Doctor --

5 A. You are asking me the questions not Carnow.

6 Q. Doctor, you said that it was my report, didn't you,
7 sir, so that indicates to me that --

8 A. You have given this to me, sir.

9 Q. It indicates you must have talked to somebody.

10 A. I didn't talk to anybody, sir.

11 Q. All right.

12 A. Don't accuse me of these things if you don't have
13 them verified, sir.

14 Q. Doctor, I'm asking you for verification is what I'm
15 asking you.

16 A. I'm telling you these are the first time I've ever
17 seen these things.

18 Q. That's fine.

19 A. And I don't find them in the report, sir.

20 MR. CARR: Your Honor, would you direct the jury to
21 disregard the latter statement of the witness? I haven't
22 asked him whether he found it in the report.

23 THE COURT: It was not responsive to the question.
24 The jury is ordered to disregard that remark. Doctor, please

1 keep your comments responsive to the questions that are asked
2 of you by counsel, no more, no less.

3 A. Yes, sir.

4 THE COURT: You may proceed, Counsel.

5 Q. (by Mr. Carr) Doctor, you do find in the reports
6 the data upon which these exhibits are based, do you not,
7 sir?

8 A. I have no idea where they are, sir.

9 Q. Doctor, if you don't have any idea, why do you say
10 it's not in the report, if you have no idea?

11 A. Because my memory of this report doesn't indicate
12 that this was ever presented in a report in this way.

13 Q. Oh, Doctor, but you didn't say that, did you, sir?
14 Doctor, if you will turn to Page 61 of the report, sir. It's
15 part of 1671. I can help you. It's all there in the one
16 document, sir. Are you on Page 61, Doctor?

17 A. I am on Page 61.

18 Q. You will see the words there "persistent
19 headaches," will you not, sir, in the questionnaire form? Do
20 you see that, sir?

21 A. I do, sir.

22 Q. And do you see under the column high-risk
23 percentage with abnormality 36.8 percent, do you see that,
24 Doctor?

1 A. I do.

2 Q. The Exhibit 1671d has rounded that off to 37
3 percent, has it not, sir?

4 A. It has, sir.

5 Q. And if you look in the low-risk group column
6 percentage with abnormality, you'll see the percentage for
7 persistent headaches with 41.2, will you not, sir?

8 A. That's correct.

9 Q. And, Doctor, the Exhibit 1671d has rounded off 41.2
10 to be 41, has it not, sir?

11 A. That's what I read, sir.

12 Q. Thank you, Doctor. And if you would care to check
13 the other findings there, the joint and muscle pain for the
14 percentage of high-risk group you'll see a 30.9, will you
15 not, sir, in Table C-2 on Page 61, 30.9 percent of these
16 people in the high-risk group had that abnormality?

17 A. Correct, sir.

18 Q. All right. You also see in the low-risk, and it's
19 been rounded off in the 1671d to be 31 percent, has it not,
20 sir?

21 A. I believe so.

22 Q. And you'll see the low-risk group at 32.4 percent
23 in the Missouri Pilot Health Study and Exhibit 1671d has been
24 rounded off to 32 percent, do you see that, sir?

1 A. That's correct, sir.

2 Q. All right. Doctor, now, are you satisfied that
3 this -- the data that appears in 1671d was taken from the
4 Exhibit 1671, the Missouri Pilot Health Study?

5 A. As far as you've shown me, yes.

6 Q. We have already satisfied the Court and this is
7 already in evidence, sir, and I don't intend to go through
8 each one to satisfy you as to its accuracy. The Court knows
9 that it's accurate, and my question to you, sir, are
10 persistent headaches clinical effects?

11 MR. HEINEMAN: Objection, may counsel approach the
12 bench?

13 THE COURT: Yes, you may.

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

16 MR. HEINEMAN: Objection to Mr. Carr's speech
17 regarding what the Court knows and what the Court has ruled
18 and what he intends or not intends to go into with this
19 witness. It was purely for the jury. I object to it and I
20 move it be stricken. I ask that the jury be instructed to
21 disregard it, it's totally improper and everybody in the
22 courtroom knows it.

23 MR. CARR: Your Honor, it was response to the
24 statement of the witness that as far as he had gone he sees

1 that it's data based on it.

2 MR. HEINEMAN: Which is a perfectly responsive
3 statement because you asked him whether everything on that
4 exhibit was reflected in the --

5 MR. CARR: The implication being that the remainder
6 of it would be faulty, and we have to go through the whole
7 exhibit with him, and I don't intend to go through it.

8 MR. HEINEMAN: The remainder of it is faulty.

9 MR. CARR: I don't intend to go through the whole
10 thing with him line --

11 MR. HEINEMAN: The remainder is faulty because what
12 Mr. Carr does, he puts a total column where he joins the
13 high-risk and the control group together and that is a faulty
14 thing, and that is what I'm objecting to. And he's
15 representing to this witness that the whole thing comes right
16 out of that report, and the witness has accurately said to
17 him so far as the things you've referred me to so far they
18 appear to be what's based on the report.

19 THE COURT: Objection is overruled.

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

21 Q. (by Mr. Carr) Now, Doctor, are headaches,
22 persistent headaches clinical effects, sir?

23 A. No, they are complaints, sir.

24 Q. Doctor, do you recall testifying that headaches, if

1 it exists, is in fact a clinical effect? Do you, Doctor?

2 A. If it were based on an epidemiologic study.

3 Q. No, Doctor. You testified that a headache can be a
4 clinical effect even though the clinician can't see it and
5 even though it exists in just one person, don't you recall
6 you testified to that, sir?

7 A. I may have, yes.

8 Q. Well, it was the truth then, wasn't it, sir?

9 A. It was the truth, yeah.

10 Q. So a headache is a clinical effect, is it not, sir?

11 A. Not necessarily.

12 Q. Doctor --

13 A. It depends on how the questionnaire is stated, sir.

14 Q. Depends upon whether or not the headache does in
15 fact exist, doesn't it, sir?

16 A. Correct.

17 Q. If the people were lying, it's not a clinical
18 effect. If the people were in fact having a headache it is a
19 clinical effect, isn't it, Doctor?

20 A. Depends upon how the question is asked. If it was
21 asked did you ever have headaches, then it has no meaning,
22 sir.

23 Q. Doctor, I'm not talking about whether or not it has
24 a meaning or not.

1 A. I'm interested in that in my answer to you, sir.

2 MR. CARR: Your Honor, would you direct the witness
3 to not give us what he's interested in.

4 THE COURT: Doctor, you -- I've explained to you a
5 number of times you don't determine what questions are asked
6 of you. Respond to the question only, sir, and no more, no
7 less. Respond to the elements of the question that are
8 asked.

9 MR. HEINEMAN: Objection, Your Honor. May counsel
10 approach the bench?

11 THE COURT: Yes, you may.

12 (The following Side Bar conversation was had outside the
13 hearing of the jury.)

14 MR. HEINEMAN: Your Honor has consistently ruled
15 that these outrageous --

16 THE COURT: Keep your voice down.

17 MR. HEINEMAN: You have consistently ruled that
18 these outrageous speeches that he makes are questions, and if
19 that statement that he made is a question, then the witness
20 responded to it. And it was responsive to a question. And I
21 object to what -- and if it isn't a question, then it ought
22 to be stricken and the jury ought to be instructed to
23 disregard it. We can't have it both ways, Judge.

24 THE COURT: What he was asked was a question. What,

1 he responded was not the proper response. I explained to him
2 why it was not a proper response. It is also the same reason
3 for my denial of your objection. Your objection is
4 overruled. I would suggest you listen a little more closely
5 to the questions that are asked because you are making
6 objections that are just as not responsive to the question as
7 his answers have been.

8 MR. HEINEMAN: Your Honor, I think the record will
9 reflect the correctness of my objection.

10 THE COURT: I seriously doubt that.

11 MR. HEINEMAN: I think it will.

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

13 Q. (by Mr. Carr) Doctor, a headache would be
14 considered a clinical effect, would it not, sir?

15 A. It might be, depending upon how the question was
16 asked, sir.

17 Q. Doctor, if you asked a person do you have a
18 headache, or do you have headaches, and that person said,
19 yes, I have a headache or I have headaches, that would be a
20 clinical effect, wouldn't it, sir?

21 A. If that's the way the question was asked, yes. But
22 I don't know how the question was asked here, sir.

23 Q. I'm not suggesting that you do know. I'm not
24 asking that you know.

1 A. It's important, though.

2 Q. It may be to you and Mr. Heineman will have an
3 opportunity to let you explain how important you consider it
4 to be, but we have already gone through this exhibit with one
5 witness and we don't need to go through it again.

6 A. Why are you asking me these questions, sir?

7 THE COURT: Doctor, that question was not proper.
8 Counsel is allowed to question on the areas that I determine
9 are proper cross examination, and it's not for you to
10 determine what that is. You may proceed.

11 Q. (by Mr. Carr) Doctor, are headaches then clinical
12 effects?

13 A. They may be, sir, yes.

14 Q. And, Doctor, can persistent headaches be clinical
15 effects?

16 A. They may be.

17 Q. Are joint and muscle pains clinical effects, sir?

18 A. In this instance, I don't know, sir.

19 Q. Doctor, could you answer my question?

20 A. I'm referring to these exhibits.

21 Q. I'm not asking you to refer to that, am I, sir?

22 I'm asking you whether or not joint and muscle pains can be a
23 clinical effect?

24 A. Mr. Carr, I thought you were asking me about this,

1 sir, because this is what we just got through talking about.

2 Q. Doctor, can joint and muscle pains be clinical
3 effects?

4 A. They might be clinical effects.

5 Q. Doctor, can swelling in hands or feet be clinical
6 effects?

7 A. If you are talking in a very general way, in a very
8 general way and not to this, they might be.

9 Q. Doctor, can loss of ten pounds in one month be a
10 clinical effect?

11 A. I don't know. I really don't.

12 Q. Doctor, can it be a clinical effect of a disease
13 process?

14 A. It might be.

15 Q. It can, can't it?

16 A. It might be, sir, not it can be. I'm answering,
17 not you. It might be.

18 Q. Doctor, can it be?

19 A. I said it might be.

20 Q. My question, can it be?

21 MR. HEINEMAN: Objection, asked and answered.

22 THE COURT: Objection is overruled.

23 A. What's the difference?

24 Q. Apparently some difference to you, because you said

1 might be and not can be. Now my question is can it be a
2 clinical effect?

3 A. It might be, sir.

4 MR. CARR: Your Honor, would you direct the witness
5 to answer my question?

6 THE COURT: Doctor, that was not responsive to the
7 question. Please answer.

8 A. If you want to use your terms, it can be.

9 Q. Yes, Doctor. And can blood problems be a clinical
10 effect, Doctor?

11 A. I don't know what blood problems are, sir.

12 Q. Any kind of blood problems. Can you get blood
13 problems as a clinical effect from exposure to disease,
14 sickness, illness, cutting your arm, injecting things in it?
15 Can it be a clinical effect, Doctor?

16 A. Again, it might be.

17 Q. My question is can it?

18 A. It can be, using your terms.

19 Q. Thank you, Doctor. Doctor, you have 1671b in front
20 of you, sir?

21 A. d?

22 Q. b. Do you have it in front of you, Doctor?

23 A. I am looking at it, sir.

24 Q. Thank you, Doctor. Can prolonged infections be a

1 clinical effect, Doctor?

2 A. Can be an effect of infections.

3 Q. Doctor, my question is, can prolonged infections be
4 a clinical effect?

5 A. I really can't answer that question in the way it's
6 stated, sir.

7 Q. Doctor, if someone has a disease process affecting
8 his body, that is a prolonged infection, is it not, sir?

9 A. Can be a prolonged infection.

10 Q. You can get any number of infectious diseases, can
11 you not, sir?

12 A. Man is subject to a large number of infectious
13 diseases.

14 Q. Are not infections clinical effects of disease?

15 A. They are the clinical effects of infections, sir.

16 Q. Doctor, infection is an effect of infection?

17 Doctor, you are using the same word to define something. My
18 question is the effect of --

19 A. Of what?

20 Q. Of the reaction of the human body to a
21 microorganism. That's a clinical effect of a microorganism?

22 A. Not my question -- infection --

23 Q. You can have prolonged infections as a clinical
24 effect of those microorganisms?

1 A. You might.

2 Q. If your immune system has been depressed by some
3 virus or disease, you can have prolonged infections as a
4 result of the effect upon your immune system, can you not,
5 sir?

6 A. You might.

7 Q. As a prime example, it's the poor unfortunate
8 suffering from AIDS, sir, they are subject to prolonged
9 infections, aren't they, sir?

10 A. They are indeed, sir.

11 Q. And, Doctor, that is a clinical effect of a very
12 very disturbed immune system, isn't it, sir?

13 A. It is indeed.

14 Q. Yes. And, Doctor, can marked depression in
15 lymphocyte proliferation be a laboratory or clinical effect,
16 sir?

17 A. No, it's not a clinical effect, sir.

18 Q. Is it a laboratory effect, Doctor?

19 A. It's a laboratory finding, sir.

20 Q. Doctor, can a laboratory finding in a general way
21 be a laboratory effect, sir?

22 A. It might be.

23 Q. Can it be, Doctor?

24 A. In your terms, it can be.

1 Q. Thank you, Doctor. The T 4:T 8 ratio of less than
2 one, can that be a laboratory or clinical effect, Dr.
3 Suskind?

4 A. It's not a clinical effect, sir.

5 Q. Can it be a laboratory effect?

6 A. It might be a laboratory effect.

7 Q. Can it be?

8 A. It can be.

9 Q. Doctor, you have 1671f in front of you?

10 A. I do, sir.

11 Q. And, Doctor, that's headed Missouri Health Study
12 Neurological Findings, is it not, sir?

13 A. Does this compare the --

14 Q. Excuse me. Could you answer my question, please?

15 A. I think in order to answer it --

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

18 THE COURT: Please answer the question directly.

19 Q. My question is does the exhibit you have in front
20 of you say Missouri Health Study Neurological Findings at the
21 top of it?

22 A. That is what it says in this exhibit, sir.

23 Q. Thank you, Doctor. Now, Doctor, are peripheral
24 neuropathies -- you've already mentioned it a number of

1 times, are clinical effects, have you not, sir?

2 A. A clinical complaint which may be a clinical
3 effect.

4 Q. Is that a yes to my question you have said on a
5 number of occasions that peripheral neuropathies are clinical
6 effects?

7 A. It is a yes with an explanation, sir.

8 Q. Doctor, I'm really not asking for an explanation.
9 You have said you have found it is in your Nitro group, it is
10 a clinical effect from TCDD exposure, have you not?

11 A. We call it clinical features there, sir, yes.

12 Q. But, Doctor, when I ask you questions about this
13 exhibit, you agreed that these were clinical effects, did you
14 not, sir?

15 A. They can be, yes.

16 Q. Didn't you agree, Doctor, that these were clinical
17 effects on this board?

18 A. In that chart, yes, sir. In this chart, I don't
19 know, sir.

20 MR. CARR: Your Honor, would you direct the witness
21 to not go beyond my question, because I'm asking about the
22 chart 1692b.

23 THE COURT: Doctor --

24 A. In that, yes, sir.

1 THE COURT: Okay, fine, that's the way to answer
2 it. You did not go beyond the question.

3 Q. (by Mr. Carr) Now, Doctor, can dizziness be a
4 clinical effect?

5 A. It might be, yes.

6 Q. Is that a yes to can, Doctor?

7 A. It --

8 Q. Because I'm asking you can it be a clinical effect,
9 Doctor, if you don't mind, you'll save a lot of time if
10 you'll respond to that question. Can it be a clinical
11 effect?

12 A. I'm not altogether sure, sir.

13 Q. Doctor, what do you think I'm asking -- would you
14 read the question to him?

15 COURT REPORTER: "Now, Doctor, can dizziness be a
16 clinical effect?"

17 A. Can it be a clinical effect? That's what you've
18 asked?

19 Q. Can dizziness be a clinical effect?

20 A. In a general way it might be, yes.

21 Q. Doctor, but you say might be yes, but you see my
22 question is can it be. My question is not might it be yes.
23 My question is can it be.

24 A. Is there a difference between can and might?

1 Q. Apparently you think so. Apparently I think so. I
2 wouldn't persist in using the word and you wouldn't persist
3 in using the word might if you didn't believe there was a
4 difference, and if I didn't believe there was a difference.
5 I'm asking the question can it be a clinical effect?

6 A. Then I'll have to answer no because the answer is
7 it might be.

8 Q. And --

9 A. If there is a difference.

10 Q. So dizziness cannot be a clinical effect?

11 A. It's not that at all.

12 Q. Can dizziness be a clinical effect of a blow on the
13 head, of getting something injected, of some kind of disease,
14 of epilepsy, of any number of things? Can dizziness be a
15 clinical effect of a disease, or injury, or toxic poisoning,
16 or fatigue, or high blood pressure, or low blood pressure?
17 Can dizziness be a clinical effect, Doctor?

18 A. Of those things you mentioned?

19 Q. Yes.

20 A. Yes.

21 Q. Thank you, Doctor. Now, Doctor, how about loss of
22 sensation in extremities, can that be a clinical effect?

23 A. It's possible.

24 Q. Is that a yes, Doctor?