

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

5 FRANCES E. KEMNER, et al.,)
6 Plaintiff,)
7 v.) CAUSE NO. 80-L-970
8 MONSANTO COMPANY,)
9 Defendant.)

10 REPORT OF PROCEEDINGS

11 Before the HONORABLE RICHARD P. GOLDENHERSH

12 Testimony of Dr. Raymond Suskind

13 March 25, 1986

14
15 APPEARANCES:

16 MR. REX CARR, Attorney at Law,
17 MR. JEROME SEIGFREID, Attorney at Law,
18 On behalf of the Plaintiffs,

19 MR. KENNETH HEINEMAN, Attorney at Law,
20 MR. JOSEPH NASSIF, Attorney at Law,
21 On behalf of the Defendant.

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23
24 PATRICIA A. GANDY, CSR, RPR

25 Official Court Reporter

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WITNESSES:

DR. RAYMOND SUSKIND

Continued Cross Examination by Mr. Carr . . 3

In chambers conference 2

1 BE IT REMEMBERED AND CERTIFIED, that heretofore,
2 on to-wit: March 25, 1986, the matter as hereinbefore set
3 forth came on for hearing before the Honorable Richard P.
4 Goldenhersh, Circuit Judge, Twentieth Judicial Circuit, State
5 of Illinois, and the following was had of record, to-wit:

6 * * * * *

7 (The following conference was held
8 in chambers.)

9 THE COURT: Okay, this will just take a minute.
10 I have had submitted to me one document of two pages in
11 camera, I guess you got a copy of the memo and everything
12 that they gave you?

13 MR. CARR: I got a copy of something. I don't
14 know whether--

15 THE COURT: I've reviewed the document, I think
16 it is discoverable, and I am ordering that a copy be turned
17 over to Mr. Carr immediately.

18 MR. NASSIF: I don't know if we have a copy with
19 us.

20 THE COURT: You can xerox my copy and make copies
21 for him and for yourself, and please give me the copy back.

22 MR. NASSIF: Okay, your Honor, sure will.

23 THE COURT: That's it. I said I would rule on it
24 as soon as I get it, so I'll let you know.

25 MR. CARR: Can I see that before we start? It

1 might be relevant to what I am in now.

2 THE COURT: That's why I wanted to do it now.

3 (The following proceedings were
4 held in open Court.)

5 THE COURT: Good morning.

6 CONTINUED CROSS EXAMINATION

7 BY MR. CARR

8 Q Dr. Suskind, yesterday we were discussing the
9 Exhibit 1799. Do you have it before you yet?

10 A Yes, sir, I have it before me, yes.

11 Q And we were on Page 4, Paragraph 4. The response
12 that Monsanto made to the recommendations of Dr. Birmingham
13 and Denton was in effect that they were not going to remove
14 the workers from further exposure, even though they may
15 develop evidence of toxicity, isn't that correct, sir?

16 A One could interpret that to be so, sir, yes.

17 Q Well, you say one could, that is the plain
18 statement. They did not agree to do so, did they, sir? What
19 they did, they said in effect, no, we are not going to do
20 that because that would mean we would have to put somebody
21 else in there who would also be exposed to this hazardous,
22 insidious condition, isn't that correct?

23 A No, that wouldn't be my interpretation.

24 Q Doctor, let's do it one at a time. They did not
25 agree to follow this recommendation, did they, sir?

1 A No, they did not agree to follow it as it is
2 stated.

3 Q Yes, the recommendation was that as soon as a
4 worker develops the evidence of toxicity that he should be
5 removed, and they said, well, this is not consistent with a
6 policy of attempting to limit the number of persons exposed,
7 do they not, sir?

8 A That's what they said.

9 Q And that is in effect taking issue with a
10 recommendation and saying in their judgment it should not be
11 followed, isn't that correct, sir?

12 A It should not be--

13 Q Excuse me, that is what they are saying, are they
14 not, sir, with their response? That is the meaning of their
15 response, is it not, sir?

16 A Well, I think that it is.

17 Q All right. Now, Doctor, and they give as a
18 reason for not agreeing to remove these workers who developed
19 such evidence, they give as a reason that if they did that,
20 this wouldn't be limiting the number of persons exposed to
21 that hazard. In other words, they are saying that once
22 removed, a worker who has evidence of toxicity will have to
23 put somebody else in his place, and that would be exposing
24 another person to the toxic substance, once he develops
25 evidence of toxicity, remove him and put another one in. That

1 would not be limiting the persons being exposed to that
2 hazard, isn't that what they are saying, sir?

3 A No, I wouldn't interpret it exactly that way,
4 sir.

5 Q Well, Doctor, if they remove the worker as
6 recommended, they would have to put another person in his
7 place, would they not, sir?

8 A They might, I'm not sure.

9 Q Now Doctor, presumably that worker is doing
10 something that's required to be done in the manufacture of
11 this particular product, isn't that correct, sir?

12 A Yes, sir.

13 Q And if he is doing something that needs to be
14 done, he has to be replaced with another worker to do that
15 same thing that needs to be done, would he not, sir?

16 A Either that or the existing staff would have to
17 double up on their efforts. That's another way of doing it,
18 and it has been done.

19 Q Well, Doctor, that's not at all what they're
20 saying here. They are not saying, why, we will do that and
21 have the remaining staff double up, they are not saying that
22 at all, are they, sir?

23 A No, they don't say that here, sir.

24 Q And you and I both know that what they are saying
25 is if we remove a worker, we are obviously going to have to

1 put a number of persons in the worker's places, those workers
2 having been removed.

3 A Yes, that is an interpretation.

4 Q Now, Doctor, you say that is an interpretation,
5 and to me that's suggesting that while it is one
6 interpretation, it is not the logical or most consistent and
7 it is not the one that is meant by the statement. Doctor, it
8 clearly is what is meant by the statement, is it not, sir?

9 A Well, that's why I am not sure about it, sir.

10 Q Well, Doctor, is there anything in that
11 paragraph, sir, that suggests to you that they are agreeing
12 to remove the workers?

13 A No, there is none.

14 Q In fact, they are saying that they are not
15 agreeing to remove the workers, aren't they, sir?

16 A One could interpret it that way, sir.

17 Q Doctor, I am not asking one could. I'm asking
18 that is the plain, simple, accepted interpretation of that
19 statement, is it not, sir?

20 A No, sir, no.

21 Q What is the plain, simple, accepted
22 interpretation of that statement, sir, if it is not--

23 A Mr. Carr, I don't think it is the same--

24 Q Excuse me, Doctor, let me finish my question,
25 please, sir. If it is not that they are not going to remove

1 the worker from the exposure when he develops evidence of
2 toxicity.

3 A No, I don't believe there is a simple
4 interpretation.

5 Q Doctor, I've suggested to you that that is the
6 interpretation that is logical, that is simple, that is meant
7 by that statement and you have said no, that it is not.
8 Well, if it is not, Doctor, that means that you have in your
9 mind the consistent, the probable, preferred interpretation
10 of that statement, and if so, what is that, Doctor?

11 A Well, I have given one.

12 Q That they are never going to double up?

13 A Yeah.

14 Q Now, Doctor, you've agreed that that's not even a
15 question in there. That's not even mentioned in there.
16 You're going outside that statement to suggest other things
17 that might be done once you remove a worker, aren't you, sir?

18 A Yes, sir.

19 Q But they're saying that they are not going to
20 remove the worker because it is not consistent with the
21 policy, isn't that what they are saying, sir?

22 A That's what they say, sir.

23 Q Yes. And Doctor, they are saying that it is not
24 consistent because they are attempting to limit the number of
25 persons as being exposed to this treacherous hazard, and they

1 simply don't want to put other workers in there to replace
2 these workers who show evidence of toxicity, isn't that what
3 they are saying, sir?

4 A Well, they are saying that they are limiting the
5 number of persons potentially exposed to a hazard.

6 Q And how are they going to limit those persons,
7 according to this paragraph, Doctor?

8 A By keeping the number down.

9 Q And how are they going to keep the number down,
10 sir?

11 A By having as few workers there as possible.

12 Q And how are they going to keep as few workers
13 there as possible when one worker develops evidence of
14 toxicity?

15 A Well, one could interpret that by not immediately
16 removing the person.

17 Q Now, Doctor, not one could interpret that, that is
18 what is said there, is it not, sir?

19 A Yes, that's what it says.

20 Q Yes. And Doctor, what that does to the person
21 that is not removed, it allows him to accumulate in his system
22 further toxic substance, doesn't it, sir?

23 A No, not necessarily, sir.

24 Q Not necessarily, Doctor, indeed. But if he got
25 evidence of toxicity from working in that environment, and

1 the environment has not changed, he continues to work there,
2 sir, he's going to continue to accumulate this treacherous
3 substance, is he not, sir, other things being equal, Dr.
4 Suskind?

5 A I don't know about the accumulation part of it,
6 because don't think that's been studied in humans.

7 Q Doctor, if he got the--you don't think it has
8 been studied in humans, Doctor?

9 A Right. The accumulation of this material.

10 Q Well, Doctor, I don't want to pass on that
11 tangent. We have had plenty of evidence on the accumulation
12 effect. We have had cadavers in St. Louis whose tissue has
13 been studied and we won't get into that if you don't know
14 anything about it.

15 A I do know something about it, sir, and I insist
16 that there is no evidence of accumulation.

17 MR. CARR: I am not asking him questions about--

18 THE COURT: Doctor, please just listen to the
19 question and respond to the question. Nothing more, nothing
20 less. I've asked you that before. Please follow that
21 directive.

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

24 THE COURT: Yes, you may.

25 (The following conference was

1 held at the bench.)

2 MR. HEINEMAN: If indeed as Mr. Carr and the
3 Court has previously insisted that all these speeches of Mr.
4 Carr are indeed questions rather than mere speeches as I have
5 said they are in the past, then that is a question that
6 yields a reponse. He accused the witness of not knowing
7 anything about it. The witness responded quite naturally,
8 yes, I do know a great deal about it, and if indeed that was
9 a question, then he got the proper response to it. If it is
10 not a question and not just a speech that is not supposed to
11 elicit an answer, then I ask that it be stricken and I ask
12 the Jury be instructed to disregard it.

13 MR. CARR: I have nothing to say, your Honor.
14 The question did not call for that kind of response from the
15 witness, I did not examine, do not intend to go into the
16 issue of accumulation. We have had it in a number of
17 witnesses testifying in this case, practically unanimously,
18 that it does accumulate in the system. Monsanto has
19 documents prepared that it does accumulate in the system in
20 human beings. We have so much evidence on that. There is
21 absolutely no point in engaging in an argument with this
22 witness on that point.

23 THE COURT: Objection is overruled.

24 MR. HEINEMAN: Well, I'd like to say, your Honor,
25 for the record, I am not agreeing with Mr. Carr's

1 characterization, and I do object to the Court's instruction
2 to the witness in light of the witness' proper answer to Mr.
3 Carr's question.

4 THE COURT: First of all, it wasn't a proper
5 answer. Number two, it was an interruption of what Mr. Carr
6 was saying, which is also improper. Objection overruled. We
7 have gone into too many tangents with this witness to allow
8 another one.

9 (The following proceedings were
10 held in open Court.)

11 BY MR. CARR:

12 Q Doctor, Monsanto by this answer acknowledges that
13 the hazard in question is one of an insidious nature, do
14 they not, sir?

15 A I believe that's how it is described, sir.

16 Q And Doctor, you didn't write the document, did
17 you, sir?

18 A Did I write this document?

19 Q You did not write the document, did you, sir?

20 A No, sir, I did not.

21 Q And Doctor, one of the definitions of insidious
22 by Webster's Dictionary as you said the other day was having
23 a gradual and cumulative effect. You remember that, don't
24 you, sir?

25 A Yes, I do remember it.

1 Q In addition to being treacherous?

2 A Yes, sir.

3 Q Now, it is entirely possible that Monsanto used

4 the word insidious having in mind the dictionary definition

5 of the word insidious in addition to being treacherous, that

6 that is a gradual and cumulative effect, isn't that possible,

7 sir?

8 A I don't know, sir.

9 MR. HEINEMAN: Doctor, please, Doctor, please.

10 Let me object to the question, your Honor as calling for

11 speculation on the part of the witness.

12 THE COURT: Objection overruled.

13 Q Doctor, is it possible, sir, that they had in

14 mind that meaning of the word?

15 A No, sir.

16 MR. HEINEMAN: Same objection.

17 THE COURT: Objection overruled.

18 Q You don't think it is possible? Dr. Suskind, if

19 you didn't write it, you acknowledged that it is a definition

20 of the word insidious, is it not, sir?

21 A It is your dictionary's definition, yes.

22 Q In my dictionary, Doctor?

23 A One of the dictionary's definition.

24 Q It is Webster's definition, is it not?

25 A Well, I don't know what dictionary it was.

1 Q So it is a definition of the word insidious,
2 isn't it, sir, not mine at all?

3 A It is one definition, sir, among many, among five
4 or six or seven.

5 Q Actually, there is two, one is treacherous and
6 the other is having a gradual and cumulative effect.

7 A No, there were more. The thing you showed me had
8 more than two definitions.

9 Q It had two definitions, but explanations of the
10 two, Doctor, if you would like to look at it, number one was
11 treacherous, and number two was having a gradual and
12 cumulative effect as in a disease developing so gradually as
13 to be well established before becoming apparent. If you want
14 to look at that, number one definition is treacherous.
15 Number two definition, sir, is gradual and cumulative. If
16 you would look at that, please.

17 A There were two major definitions, but there are
18 sub-definitions as well.

19 Q Indeed, Doctor, as I stated.

20 A Okay, but there are more than really two
21 definitions.

22 Q Doctor, the two definitions, number one is
23 treacherous, number two is having a gradual and cumulative
24 effect, isn't that correct, sir?

25 A That's what, those are the major ones, right.

1 Q Thank you, Doctor. And, Doctor, since you
2 don't--didn't write the document, it is possible that the
3 author of the document meant treacherous because that is a
4 gradual and cumulative effect, isn't that possible, Dr.
5 Suskind?

6 MR. HEINEMAN: Objection. Calls for speculation
7 on the part of the witness.

8 THE COURT: Objection is overruled.

9 A No, sir.

10 Q You don't believe it is possible? Doctor, if
11 that is a dictionary definition of the word "insidious", why
12 isn't it just barely possible, Doctor, that the author of
13 this document had the dictionary definition in mind when he
14 used the word, could you tell us why that isn't possible,
15 sir?

16 MR. HEINEMAN: Same objection.

17 THE COURT: Same ruling.

18 A I don't know that it is, so my answer is still
19 no.

20 Q You said that it wasn't possible. My question is
21 that it is possible that he had that definition in mind, is
22 it not, sir?

23 A I don't know, sir.

24 Q Doctor, if you don't know, then it is possible,
25 is it not, sir? If you don't know whether he had that

1 definition in mind and if that is one of the definitions of
2 the word "insidious", then it is possible, sir, that he had
3 that definition in mind when he wrote this answer, isn't that
4 correct, sir?

5 MR. HEINEMAN: Same objection.

6 A No, sir.

7 THE COURT: Overruled.

8 Q Doctor, why isn't it possible?

9 A Because.

10 Q Doctor, if it is one of two possible definitions
11 and you don't know which one he had in mind, do you, sir?

12 A If you will let me answer the question.

13 Q Doctor, you don't know.

14 A Are you asking me why? Did you ask me a
15 question?

16 THE COURT: Doctor, wait a second. Doctor, when
17 you are being asked a question, please do not interrupt the
18 questioner and ask to refer back to a question that had been
19 asked before. Respond to the question, please, that is in
20 front of you and wait 'til that question is completed. When
21 you make a response like that, first of all, it disrupts the
22 questioning and extends the questioning, and also the
23 questioner has a right to interrupt a non-responsive answer
24 to please wait until the question is finished and answer the
25 question that is presently before you.

1 The attorneys who are questioning you, both
2 Plaintiffs' attorney and Defendant's attorney, have the right
3 to control the questioning. You have to do the answering.
4 Mr. Carr, you may proceed.

5 BY MR. CARR:

6 Q Thank you. Doctor, if there are two
7 possibilities and you don't know which one the author used,
8 he may have used either one, may he not, sir? It is possible
9 that he may have used either one, sir, if you don't know
10 which one he used.

11 A No, sir.

12 Q Doctor, I have two things in my hand behind my
13 back. Now, it is possible that I have got a pen in one hand.
14 You don't know. It is possible that I have got a pen in my
15 left hand, isn't it, sir?

16 A Possible.

17 Q And possible that I have a document in my right
18 hand, isn't it, sir?

19 A That's possible.

20 Q And you don't know which one of those
21 possibilities is true, do you, sir?

22 A Not in that case, sir.

23 Q Yes, Doctor. And you didn't discuss this
24 document with Mr. Bowles, did you, sir?

25 A I did not.

1 Q And you didn't discuss the use of the word
2 "insidious", did you, sir?

3 A No, I did not.

4 Q And you didn't write the document, did you, sir?

5 A No, sir.

6 Q And insidious has two possible definitions,
7 doesn't it, sir?

8 A That's what you have shown, sir.

9 Q That's what the dictionary has shown.

10 A Two major definitions.

11 Q The person may have looked at the dictionary
12 before he wrote the document, may he not, sir?

13 A He may have, yes.

14 MR. HEINEMAN: Objection.

15 Q That's possible, isn't it, sir?

16 MR. HEINEMAN: Objection, your Honor, calls for
17 speculation on the part of the witness.

18 THE COURT: Objection is overruled.

19 Q That's possible, isn't it, sir?

20 A It is possible, yeah.

21 Q And it is possible that he chose one of those two
22 definitions, isn't it, sir?

23 A No, sir.

24 Q Doctor, if he looked at the definition in the
25 dictionary and saw two definitions, isn't it possible that he

1 chose one of the two?

2 A No, sir.

3 Q Doctor, does he have the ability to choose either
4 of those two?

5 MR. HEINEMAN: Your Honor, excuse me, may my
6 objection to the speculative nature of this questioning
7 extend to the entire line of questioning so I won't have to
8 keep repeating it?

9 THE COURT: Sure.

10 MR. HEINEMAN: Thank you.

11 A Would you repeat the question, please?

12 (The previous question, "Doctor,
13 does he have the ability to choose
14 either of those two?" was read by
15 the reporter.)

16 A If he saw the dictionary, if he saw that
17 dictionary.

18 Q Yes, I gave you that.

19 A He might have a choice, sure.

20 Q And it is possible that he chose either one of
21 those two, isn't it, sir?

22 A No, sir.

23 Q Doctor, does he have the ability to choose?

24 A Yes, he has.

25 Q Then it is possible he chose either one?

1 A No, sir.

2 Q Doctor, do I have the ability to pick up either

3 one of these two file folders in front of me?

4 A Yes, you do.

5 Q Is it possible that when I decide to pick up one,

6 I will pick up either this one or that one?

7 A Yes, in that case, yes, sir.

8 Q Doctor, can you tell me which of these two I am

9 going to pick up?

10 A No, I can't tell you.

11 Q Then I have the ability to choose, it is possible

12 I can choose this one, isn't it, sir?

13 A In your case, yes, sir.

14 Q And it is possible I can choose this one?

15 A In your case, yes, sir.

16 Q And if one definition is over here, the word

17 treacherous is here and the other word, cumulative, is over

18 here, it is possible that I can pick up that word, isn't it,

19 sir?

20 A In your case, sir.

21 Q Doctor, if I start--

22 A Only in your case, sir.

23 Q Doctor, if I start writing down a sentence here

24 and use the word "insidious", it is possible that I have in

25 mind either one of those two definitions, isn't it, sir?

1 A In your case, sir, yes.

2 Q And Doctor, you know Mr. Bowles had the
3 same choices, did he not, sir?

4 A Yes, sir.

5 Q My question is he had the same choices, did he
6 not, sir?

7 A He had--

8 Q He had the same choice that I have, sir, to use
9 the word in the meaning the way he wanted to mean it.

10 A My answer is no, sir.

11 Q He didn't have the same choice that I have got?

12 A No, sir.

13 Q He was compelled to use a particular definition,
14 sir?

15 A I believe that he may have been--

16 Q Well, Doctor, now you say you believe he may have
17 been. Do you know, sir?

18 A Yes, sir, I do.

19 Q You did discuss it with him?

20 A No, I did not discuss it with him, but I know Mr.
21 Volz, and that's what I am talking about.

22 Q Doctor, you may know Mr. Volz in and out, but
23 that doesn't tell you that he is going to use one dictionary
24 definition rather than another.

25 A It would give me a very good clue, sir.

1 Q Doctor, I am not quarreling with, "it might give
2 you a clue--"

3 MR. HEINEMAN: Objection. He is interrupting the
4 answer.

5 THE COURT: Objection overruled. Not responsive.

6 Q Your knowledge of the man wouldn't give you a
7 clue, it might give you a great deal of clue. What I am
8 saying, Doctor, is that you don't know in fact, sir, how he
9 intended to use that word, do you, sir?

10 A I do, sir.

11 Q Did you discuss it with him, sir?

12 A No, I did not.

13 Q Then Doctor, you know him and know what he knows,
14 don't you, sir?

15 A Yes, sir.

16 Q And you know that you would use the word
17 "insidious" to mean treacherous, don't you, sir?

18 A I would.

19 Q But you don't know that he would as well?

20 A I do.

21 Q Did you ever discuss with him what he thinks the
22 word "insidious" means, sir?

23 A No, I do not.

24 Q It is possible that he believes, that he accepted
25 the second definition of the word, isn't it, sir?

1 A No, sir.

2 Q Doctor--

3 A It is not possible.

4 Q If you have never discussed it with him, you say
5 it is not possible?

6 A Yes, sir, because I know Mr. Volz.

7 Q Doctor, I submit that you know your wife, but if
8 she writes a sentence, a word that's not used every day, it
9 is possible that she has in mind a different meaning than
10 you, isn't that correct, sir?

11 A No, sir, not my wife.

12 Q Doctor, you have never engaged in a quarrel with
13 your wife? Have you and your wife always expressed to one
14 another the exact meaning that you meant and neither has ever
15 misinterpreted what the other has said in your life together?

16 A We try to do that, sir.

17 Q My question is, have you never misinterpreted
18 what your wife said to you?

19 A Rarely.

20 Q Then you have done it?

21 A I might have.

22 Q Doctor, not might have, you indeed know that you
23 have, haven't you, sir? You have misinterpreted things that
24 your wife has said to you, have you not, sir?

25 A I might have, but I can't recollect it, sir.

1 Q Now, Doctor, not might have, you have.
2 Q I said I might have, and I can't--let me finish--
3 and I can't recollect when that last time was, or ever.
4 Q I heard you say that, Doctor.
5 A Okay, and that's my answer.
6 Q Is it possible that your wife has ever
7 misinterpreted you, sir?
8 A I don't know.
9 Q Well, Doctor, Don't you know whether it is
10 possible or not?
11 A It is possible, it is possible.
12 Q It is possible, isn't it, sir?
13 A Right.
14 Q And you don't know anybody on earth, I take it,
15 better than you know your wife?
16 A Well, I hope not.
17 Q And it is possible that she has misinterpreted
18 what you said and you have misinterpreted what she said?
19 A It is.
20 Q Now, Doctor, as far as the insidious nature here,
21 sir, the point that we were getting at, Doctor--
22 A Yes sir.
23 Q Is that Monsanto made a choice that whatever
24 happened to the worker being exposed to that product of the
25 insidious nature, they are not going to be removed, are they,

1 sir? They are going to remain there and if it has a
2 cumulative effect, they are going to be continuing to
3 accumulate it, if it hasn't got a cumulative effect, they are
4 going to be exposed to the everyday debilitating effect of
5 that toxic substance, isn't that correct, sir?

6 MR. HEINEMAN: Object to the multiple question.

7 THE COURT: Objection overruled. Gentlemen,
8 could you approach the bench a minute, please?

9 (The following conference was
10 held at the bench.)

11 THE COURT: I think you are beginning to make
12 speaking objections, and I have ruled that you will not do it.

13 MR. HEINEMAN: I don't conceive how if I object
14 to a multiple objection it is a speaking objection.

15 THE COURT: You have been making speaking
16 objections this morning, I think that they are. Please make
17 them up at the bench. If you are repeating the objections,
18 you can make a continuing objection up here.

19 MR. HEINEMAN: You mean I have to make every
20 objection up here at the bench?

21 THE COURT: Speaking objections, I think that
22 your objections before on the prior line of questioning was a
23 speaking objection, and I felt it was an appropriate time to
24 remind you.

25 MR. HEINEMAN: May I ask the Court for a

1 definition so that I can guide my behavior with this Court as
2 to what a speaking objection is?

3 THE COURT: I have made this ruling for months.
4 I think the guidelines are clear. The reason that I worded
5 it the way I did is because I am not capable of thinking of
6 every conceivable instance in which an objection can be a
7 speaking objection. My line of rulings in the last couple of
8 months, since I put these rules into effect, make it pretty
9 clear as to what is a speaking objection and what isn't.

10 MR.. HEINEMAN: May I ask you this? Is the
11 objection "asked and answered" a speaking objection?

12 THE COURT: No, it is not.

13 MR. HEINEMAN: Okay, but the objection, objecting
14 to the multiple questions is a speaking objection?

15 MR. CARR: The Court didn't say that.

16 THE COURT: I said this is an appropriate time to
17 do it. Under certain circumstances, that might be a speaking
18 objection. A lot of this depends on how it is said and what
19 is said with it. I cannot conceivably give you an iron-clad
20 list of every circumstance because something may be a
21 speaking objection in one circumstance, depending on how it
22 is said and what's said and may not be in another. And if
23 you have any doubt, come up here and resolve it in that
24 manner. If you have any doubt, make it at the bench and
25 let's proceed on that.

1 (The following proceedings were
2 held in open Court.)

3 MR. CARR: Would you read the last question to
4 the witness, please?

5 (The previous question, "Is that Monsanto
6 made a choice that whatever happened to
7 the worker being exposed to that product
8 of the insidious nature, they are not
9 going to be removed, are they, sir? They
10 are going to remain there, and if it has a
11 cumulative effect, they are going to be
12 continuing to accumulate it. If it hasn't
13 got a cumulative effect, they are going to
14 be exposed to the everyday debilitating
15 effect of that toxic substance, isn't that
16 correct, sir?" was read by the reporter.)

17 A My answer is no, sir.

18 Q In what way is it not correct?

19 A First of all, by putting the worker back into
20 that exposure or that job, not exposure, but that job, it
21 does not--may I finish, sir?

22 Q Let me interrupt you, sir, because you are
23 avoiding the question. The question says exposure, it
24 doesn't say job. Look at the recommendation. It says
25 "further exposure", Doctor.

1 A Okay.

2 Q And you are now saying it doesn't mean exposure?

3 Well, if it doesn't mean exposure, this doesn't apply--

4 MR. HEINEMAN: Objection, your Honor.

5 Q So confine your answer to this question.

6 MR. HEINEMAN: May counsel approach the bench?

7 THE COURT: Yes, you may.

8 (The following conference was held

9 at the bench.)

10 MR. HEINEMAN: A, Mr. Carr interrupted the

11 answer.

12 THE COURT: Keep your voice down.

13 MR. HEINEMAN: Interrupted the answer. B, he

14 keeps saying this talks about exposed. It says "potentially

15 exposed", which is what the witness raised yesterday

16 afternoon and why the witness is talking about the job and

17 not the exposure. It says "potentially exposed". That's

18 what the answer is talking about. And so I object to the

19 misleading nature of the question and I object to the fact

20 that he has interrupted the witness' answer.

21 MR. CARR: To clear the air, your Honor, the

22 question referring to the recommendation is that they be

23 removed from further exposure. That's what the

24 recommendation is, that they be removed from further

25 exposure. What this witness says, putting him back in the

1 job doesn't mean that we are going to have further exposure,
2 then that eliminates this whole recommendation because they
3 recommended that they not, that they be removed from further
4 exposure and the witness is clearly not responding to the
5 recommendation made and to the questions posed.

6 THE COURT: Objection is overruled.

7 (The following proceedings were
8 held in open Court.)

9 BY MR. CARR:

10 Q Now, Doctor, having in mind that the
11 recommendation is not that the man be removed from his job,
12 but that he be removed from further exposure, which of course
13 involves his job. It is a different--Doctors Birmingham and
14 Denton say when they developed that, vis a vis, on their job,
15 removed them from further exposure. Now, Doctor, take that
16 as a given before you go on with your answer, would you, sir?
17 That working there, what they are doing is exposing them to
18 the substance, will you take that as a given, Doctor, and
19 then proceed with your answer?

20 A I will, sir, and I will answer. The answer is
21 no.

22 Q Doctor, you were going to go and explain your
23 answer why not.

24 A I was going to explain.

25 Q Please do so.

1 A Because what the recommendation reads, sir, and I
2 will read it--

3 Q Doctor, no, no, we've read it, Doctor. What I
4 want you to do is explain why you don't agree with the
5 hypothesis that I gave you in my question. Would you like to
6 hear the question again, Dr. Suskind?

7 A Sir, it is a long question and has many parts,
8 and I'd like it, if it is possible, to split it up.

9 Q Doctor, would you like to hear it again?

10 A Because there are multiple questions, sir.

11 Q Doctor, would you like to hear it again?

12 A If that's the way you want to put it, fine. I
13 will listen to it.

14 Q Doctor, would you like to, in order to
15 understandably answer the question, you've answered the
16 entire question, you said no, isn't that correct?

17 A I did indeed.

18 Q Now, Doctor, I'm asking you to explain why you
19 say no. Now, do you need the question reread in order to
20 explain to us why you have said no?

21 A No, sir, I will explain why I said no, sir.

22 Q Go ahead, sir. Go ahead.

23 A The question has in it removal from further
24 exposure, and the answer was in this document, sir, that it
25 is inconsistent with the policy to limit the number of

1 persons potentially exposed, potentially exposed, and that
2 means that they may or they may not be exposed to hazardous
3 materials or a hazardous process.

4 The other part of your question had to do with
5 accumulation, and I insist, sir, that at this time Mr. Volz
6 or Mr. Halley didn't know anything about accumulation.

7 Q Doctor, would you please stop? I am making an
8 objection to the Court. The Court has advised you to stop
9 when I am making an objection.

10 A No, you've advised me to stop.

11 THE COURT: I have, too, Doctor.

12 THE WITNESS: Thank you.

13 Q The Court has instructed you a number of times to
14 stop when somebody is making an objection, don't you remember
15 that, Dr. Suskind?

16 A I thought, sir, and I apologize if I am wrong. I
17 thought you advised me to stop.

18 Q And you don't remember the Court just telling you
19 now?

20 A This morning after you did, sir.

21 Q No, but earlier this morning telling you to stop
22 when counsel is making an objection, when he is interrupting
23 your answer. You don't recall that, Dr. Suskind? It is not
24 written down there, Doctor, you don't recall the Court
25 telling you that?

1 A I do, sir.

2 Q All right. Now, Doctor--

3 MR CARR: Your Honor, my objection is that the

4 witness is answering a question that was--that he assumes--

5 MR. HEINEMAN: May counsel approach the bench?

6 THE COURT: Counsel, approach the bench.

7 (The following conference was held

8 at the bench.)

9 MR. CARR: Yes, you are correct, your Honor. My

10 objection is the witness is answering the question that he

11 conceives was posed before. The Court has already ruled once

12 that he may not give that answer. The witness heard the

13 ruling, but he now wants to throw in there, that is not at

14 all responsive to the question that I posed to the witness.

15 He is not explaining his answer to the question posed, he is

16 trying to give an answer to some other question.

17 MR. HEINEMAN: Your Honor, as Mr. Carr--since the

18 question was so long and multiple, Mr. Carr probably forgot

19 the fact that he included a statement about accumulation in

20 the question, and that's what the witness is responding to.

21 MR. CARR: But what I said, counsel, was either

22 putting there, if it is cumulative or if it is not

23 cumulative, that's what I said.

24 MR. HEINEMAN: And he is talking about

25 accumulation--

1 MR. CARR: I didn't ask him to agree that it had
2 to be cumulative. I gave him in the question that it need
3 not be cumulative, and his reponse was in no way directed. I
4 said either they are being put back if it is cumulative, or
5 if it is not cumulative, they were put back to the day of the
6 debilitating effects of the dioxin. That didn't call for an
7 answer, well, it is not cumulative.

8 MR. HEINEMAN: Of course it does. You asked him
9 why, he said no to your question. And he is telling you why
10 he said no to your question, and you just don't like what he
11 has to say.

12 THE COURT: It is not responsive. Objection is
13 overruled.

14 MR. CARR: It was my objection, your Honor.

15 THE COURT: I mean, your objection was sustained.

16 MR. CARR: Would you direct the witness to listen
17 to the question and answer that question? Have it read to him
18 again.

19 THE COURT: I think it should be read to him
20 again.

21 MR. HEINEMAN: May I object to the Court's
22 direction to the witness? I think the answer was perfectly
23 responsive to the question.

24 THE COURT: No way it was responsive. Could you
25 read the question back to him, please?

1 (The following proceedings were held
2 in open Court.)

3 (The previous question, "Is that
4 Monsanto made a choice that whatever
5 happened to the worker being exposed to
6 that product of the insidious nature, they
7 are not going to be removed, are they, sir?
8 They are going to remain there, and if it
9 has a cumulative effect, they are going to
10 be continuing to accumulate it. If it
11 hasn't got a cumulative effect, they are
12 going to be exposed to the everyday
13 debilitating effect of that toxic
14 substance, isn't that correct, sir?" was
15 read by the reporter.)

16 THE COURT: Now, Doctor, answer just that
17 question.

18 A My answer is no.

19 Q You gave that answer before, and we've asked you
20 to explain your no answer to that question.

21 A I believe I have attempted to explain it, and
22 since the question has several parts, sir, and several
23 factors which are included, all of those parts have to be
24 answered. And my general answer for that would be no. Now,
25 the reason I'm saying this is that the Monsanto reply was

1 that they limited the persons potentially exposed to a
2 hazard, potentially exposed to a hazard, so that they have
3 the ability to provide whatever is required to limit that
4 exposure so that the potential is decreased. This reply
5 doesn't say this, but--

6 Q Doctor, I want you to address your remarks to the
7 question given, and you have gone astray from it. Now,
8 listen to the question, Doctor. By this answer, Monsanto has
9 said that they are not going to remove these workers from
10 this further exposure?

11 A From the potential hazard they said they are,
12 sir. They didn't say exposure.

13 MR. CARR: Your Honor, would you direct the
14 witness to let me finish what I am saying?

15 THE COURT: Doctor, I don't think he did finish.
16 Now, wait, please, until the attorney asking you the
17 question has finished his question.

18 Q Doctor, the recommendation is that the workers
19 who developed the evidence of toxicity, any evidence of
20 toxicity, should be immediately removed from further
21 exposure, correct, sir?

22 A Right.

23 Q Now, Doctors Birmingham and Denton have said that
24 when a worker on a particular job or any worker that's in
25 this department, as soon as he develops any evidence of

1 toxicity, he should be immediately removed from further
2 exposure, correct, sir?

3 A That's what they mean, sir.

4 Q Now, if he develops evidence of toxicity, he is
5 being exposed, isn't he, sir?

6 A Yes, I believe so.

7 Q It is not a potential, a possible exposure, it is
8 a fact. He is being exposed, isn't he, sir?

9 A Yes.

10 Q No question about that, Doctor. We are sure now,
11 we are not talking about potential exposure, the
12 recommendations don't talk about potential exposure, the
13 recommendation is talking about exposure, period, that is
14 taking place when the workers develop the toxicity evidence,
15 isn't that correct, sir?

16 A That's what the sentence reads, sir.

17 Q And it is not potential exposure, is it, Doctor?

18 A If they apply it--

19 Q Doctor, it is not potential exposure, is it, that
20 they are talking about?

21 A Birmingham and Denton didn't use the word
22 potentially exposed, no.

23 Q Doctor, my question is Birmingham and Denton are
24 not talking about potential exposure, are they, sir?

25 A Not in the way they phrase it, sir.

1 Q They are talking about actual exposure, aren't
2 they, sir?

3 A They are talking about further exposure.

4 Q Which is actual exposure, is it not, sir?

5 A I assume that's what they mean, sir.

6 Q Any question about it, Doctor, these are workers
7 who are doing something, they have the evidence of toxicity
8 showing up, they are being exposed, there is no question
9 about that, is there, sir?

10 A Well, I don't know, but--

11 Q Doctor, is there any question but what if they
12 show evidence of toxicity, they are being exposed to the
13 toxic substance, is there any doubt about that in your mind?

14 A Not the way it is stated here.

15 Q Doctor, in any way that it is stated, if they
16 develop the evidence of toxicity, they are being exposed to
17 toxic substances, aren't they, sir?

18 A To a toxic substance.

19 Q And now these--Birmingham and Denton--says remove
20 that worker from what, Doctor, not potential exposure, but
21 from that further exposure, isn't that correct, sir?

22 A That's the way they state it, sir.

23 Q All right, now, Doctor. Monsanto has said no, we
24 are not going to do that. We've already established that,
25 haven't we, sir, is that what their reply means, we are not

1 going to do that?

2 A Yes, I believe so.

3 Q And by their response, they are saying this
4 worker who is being--who has been exposed and is being
5 exposed is going to remain exposed regardless of whether the
6 toxic substance accumulates or if it just simply is a daily
7 kind of exposure that does not accumulate. Either one
8 alternative, he is still being exposed to that substance, is
9 he not, sir, if he is not removed from further exposure?

10 A Not necessarily, sir.

11 Q Doctor, is he--do you accept that he is being
12 exposed to the toxic substance, and that it caused the
13 toxicity--

14 A Prior to the appearance of this toxicity, yes.

15 Q And during the everyday work that is going on, if
16 he is doing the same job every day, as he is assigned to do,
17 and he started getting toxic substance evidence exposure
18 signs, he is being exposed then, isn't he, sir?

19 A Prior to the toxicity, prior to the evidence of
20 toxicity.

21 Q Isn't he being exposed at the time of evidence of
22 toxicity, as soon as he develops that evidence of toxicity,
23 that means he's been exposed and being exposed, doesn't it,
24 sir, unless something changes, unless something has changed?

25 A Not necessarily so, no.

1 Q Doctor, how else can it be?

2 A Because there are people who are exposed to toxic
3 substances and weeks afterwards, as you have pointed out, Mr.
4 Carr, weeks afterwards, months afterwards they may show the
5 first signs of it, okay? And in the meantime, in the
6 meantime, the process of making whatever is being made may be
7 altered in such a way to decrease exposure.

8 Q Now, Doctor, you've already agreed that the
9 process was never altered, that it was the same process, the
10 hygienic things took place in later years, but that the
11 process, the ongoing process remained the same, didn't we
12 already establish that, sir?

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

14 MR. CARR: Your Honor, would you direct the
15 witness to assume that we did establish that yesterday?

16 MR. HEINEMAN: Your Honor, may counsel approach
17 the bench?

18 THE COURT: Yes, you may.

19 (The following conference was
20 held at the bench.)

21 MR. HEINEMAN: We have been through this with
22 this witness before, and Mr. Carr knows he is trying to--he
23 is playing word games with the witness again, trying to make
24 him change what he testified to yesterday. The witness
25 testified that what has not changed is the chemical formula,

1 the chemical method of making the material, that didn't
2 change. But in his mind, process included a lot of other
3 things that did change, and Mr. Carr agreed, he said, "Oh, I
4 understand that you and I may disagree on what a process
5 means, that process may include many other different things."
6 And now he's trying to say that yesterday all this witness
7 said was that the process stayed the same and that's just
8 simply not true.

9 MR. CARR: That's not at all that I said,
10 counsel. Yesterday, he said the hygienic aspects is what he
11 meant when he originally answered the question on process.
12 But I said, Doctor, it is not what we're talking about, the
13 process of making is a manufactured process, and he agreed
14 and said yes, I accept that, that's what we're talking about.
15 That actual process of manufacturing did not change, isn't
16 that correct? And he agreed that that was correct.

17 MR. HEINEMAN: What he agreed was correct, the
18 chemistry didn't change.

19 THE COURT: Yesterday he agreed that it was the
20 manufacturing of it that did not change, but he was
21 interpreting process to include hygienic regulations and
22 standards, that those involved in the manufacturing process
23 were obligated to do, and that is what he said had changed.
24 That's what my recollection, and my notes reflect also. Your
25 objection is overruled. You may proceed.

1 MR. CARR: Would you direct the witness to assume
2 that yesterday he testified that the manufacturing process of
3 making 2,4,5-T did not change.

4 THE COURT: Why don't you finish asking him?

5 MR. CARR: He has, your Honor, and the reason
6 we're up here is I'm asking you, he's already said that we
7 didn't establish it yesterday.

8 THE COURT: You're right.

9 MR. CARR: I'm asking you to direct the witness
10 to assume it so that I don't have to go through this--

11 MR. HEINEMAN: Your Honor, I will again object in
12 the same fashion which I did before.

13 MR. CARR: Counsel is making the same objection
14 again.

15 MR. HEINEMAN: I'm glad to know that you are
16 clairvoyant. I'm making the objection that it is not your
17 province to tell the Jury what the witness has said. That is
18 not the Court's province, it is up to the Jury to determine
19 what the witness has said.

20 THE COURT: I can order him to assume that he
21 said something which in my recollection and my notes reflect
22 that he said. It is the Jury's province to decide matters of
23 fact. It is part of my province to make sure that this
24 record is not warped and that when one says black is black
25 one day, that one does not insist that the day before he is

1 not allowed to assume that black is white. The Jury is the
2 only decider of fact. I have responsibility as the Judge in
3 this case to see that that factual presentation is not
4 warped, distorted, or becomes fraudulent. It is part of the
5 exercise of my function in making him assume something like
6 that. It is properly within my right to do so. I would be
7 derelict in my duty if I refused to do so.

8 MR. CARR: In addition, your Honor, I'd like to
9 point out for the record that if I was required to re-
10 establish every day the points established the prior day or
11 the prior hour, Monsanto would have within its power, as it
12 is obviously exercising now, the power to prolong this case
13 indefinitely on the simple point that did we establish that
14 27 out of 29 had these symptoms or was it his interpretation.
15 We have established that point at least a half a dozen times,
16 and as late as yesterday he has said again he had not said
17 that, that it wasn't his interpretations, that it wasn't my
18 interpretations. That is just one point. We are constantly
19 by the hour, by the fifteen minutes, required to go back and
20 re-establish points once established. And if we have to do
21 that with all of these points as the Court has pointed out
22 earlier, it is a tremendous waste of judicial time and it
23 makes this trial go on and on and on. And I might say for
24 the record here, your Honor, it is not just this witness that
25 has demonstrated this ability to deny that which has been

1 established. A number of Monsanto witnesses have the same
2 skill. And I believe personally that it is a pattern that
3 has been demonstrated so together by these witnesses that I
4 suspect is a modus of defense on the part of Monsanto. And
5 for the sake of the Court to move this case along, I don't
6 see that there is any alternative but to require the witness
7 to assume that a fact has been established in the evidence if
8 in fact it has been established.

9 MR. HEINEMAN: Your Honor, the idea that Monsanto
10 is extending the trial of this case is laughable in light of
11 the fact that Mr. Carr has been permitted to cross examine
12 this witness now for fourteen days when the witness testified
13 for two on direct examination. And it is laughable to
14 suggest that Monsanto has extended the trial of this case.
15 The record is replete with all of the things that Mr. Carr
16 has done in order to drag out the trial of this case, and I
17 know he responds to the newspaper and he gives all his self-
18 serving statements to the paper, which isn't true. The fact
19 of the matter is that Mr. Carr has been permitted by this
20 Court in my opinion to conduct a continual barrage of
21 harassment of the witnesses. He's been permitted to distort
22 their prior testimony. He's been permitted to do all kinds
23 of things which in my view are totally improper in Court.
24 I've made the objections, I have been overruled by the Court.
25 But to say that a witness' efforts to try and say the truth,

1 to try and tell the Jury what is really going on in light of
2 the restrictions that have been put on him in this courtroom
3 is, I think, absolutely ridiculous for Mr. Carr to make a
4 statement like that, and I object to it and I object to the
5 way he is conducting the cross examination of these
6 witnesses.

7 THE COURT: Okay, gentlemen.

8 (The following proceedings were
9 held in open Court.)

10 THE COURT: Doctor, I'm ordering you to assume
11 that yesterday you did say those matters that Mr. Carr has
12 asked you to assume. You may proceed, Mr. Carr.

13 THE WITNESS: May I ask a question, your Honor?

14 THE COURT: No, sir, please just listen to the
15 question that's asked of you by counsel and respond to that.
16 BY MR. CARR:

17 Q Doctor, assuming the manufacturing process has
18 not been changed by Monsanto, except with respect to the
19 hygienic aspects of worker exposure and worker cleanup as we
20 went into earlier, the workers, according to the
21 recommendation, it is the worker should be removed from
22 further exposure, in that manufacturing process, isn't that
23 correct, sir?

24 A No, sir.

25 Q Doctor, the further exposure that takes place is

1 in the manufacturing process, is it not, sir?

2 A No, sir.

3 Q Where is the exposure if it is not in the
4 manufacturing process?

5 A It is in the total performance of the process.

6 Q And is the manufacturing process in that total
7 performance, sir?

8 A The manufacturing process is in it, and my answer
9 is still no, sir.

10 Q Doctor, it is part of it, is it not, sir?

11 A And it happens to be in this instance a small
12 part of it.

13 Q Doctor, the manufacturing process is what
14 generates the toxic substance, is that not correct, sir?

15 A If you are talking about the chemical reactions,
16 yes, sir.

17 Q Yes. And Doctor, it is that chemical reaction
18 that creates the contaminant to which the men are exposed,
19 isn't that correct, sir?

20 A No, sir.

21 Q Now, Doctor, what are they exposed to if they are
22 not exposed to the contaminants manufactured in the chemical
23 process? What is it they are exposed to?

24 A The exposure can be controlled as I pointed out
25 in the case of vinyl chloride--Mr. Carr, you are interrupting

1 me.

2 THE COURT: Doctor, doctor, please. Mr. Carr?

3 Q Doctor, we are not talking about control of it.

4 A Yes, we are.

5 Q Would you read the question that I asked before
6 he started his last answer?

7 (The previous question, "Now, Doctor,
8 what are they exposed to if they are
9 not exposed to the contaminants
10 manufactured in the chemical process?
11 What is it they are exposed to?" was
12 read by the reporter.)

13 A They are exposed to the total environment in
14 which the process is part of the operation.

15 Q And Doctor what is in that environment that
16 causes them the toxic reaction?

17 A A toxic substance might be there.

18 Q Now, Doctor, if they're having their reaction, it
19 is there, is it not, sir?

20 A If they are having a reaction, they are exposed
21 to it, yes, sir.

22 Q It is there, isn't it, sir?

23 A It is there.

24 Q That is a toxic contaminant that is there, isn't
25 it, sir?

1 A Yes, sir.

2 Q And the recommendation is that these workers
3 should be removed from that exposure to that contaminant,
4 isn't that correct, sir?

5 A Yes, sir.

6 Q And Monsanto is saying no, we are not going to do
7 it, isn't that correct, sir?

8 A No, not--this is not their answer, sir, no.

9 Q Isn't this their answer, this is not consistent
10 with the policy--do they say there that they are going to
11 remove these workers from this further exposure?

12 A From the potentially--

13 Q No, Doctor, we are talking about further
14 exposure. Do they say that they are going to comply with the
15 recommendation of Birmingham and Denton?

16 A Not as it is recommended, sir, no.

17 Q And what they say is that they are not going to
18 do it, aren't they, sir?

19 A No, that's not my interpretation.

20 Q Well, do they say they are going to do it? Do
21 they say yes, we are going to remove these workers as soon as
22 they develop evidence of toxicity?

23 A No, they don't say that.

24 Q They say those workers are going to remain there,
25 don't they, sir, if there is any further exposure, they're

1 going to get it, if there is not further exposure, they are
2 not going to get it, but those workers are going to remain at
3 that job in that environment.

4 A I'm not sure I understand that question, sir.
5 Would you repeat the question?

6 Q Let me say it for you again, Doctor. These
7 workers according to this response are not going to be
8 removed, are they, sir?

9 A From a potentially exposed hazard, right.

10 Q Now, Doctor, that isn't a response to my
11 question.

12 A Well, that's their answer, sir, I'm just quoting.

13 Q Doctor, listen to my question, sir, would you,
14 sir, please?

15 A Yes, sir, I'll try.

16 Q The workers are not going to be removed from this
17 further exposure, are they, sir?

18 A No, not according to this answer.

19 Q All right. And whatever is there that has caused
20 them to develop this evidence of toxicity if it is there,
21 they are going to continue to be exposed to it, if it is
22 there, aren't they, sir?

23 A No, sir.

24 Q If it is there, Doctor, are you assuming that it
25 is there, Doctor?

1 A I am indeed, if--

2 Q If it is there, they are going to continue to be
3 exposed to it, aren't they, sir?

4 A No, sir.

5 Q Doctor, are you assuming that they were exposed
6 to it and developed evidence of toxicity?

7 A I am indeed.

8 Q And are you assuming now that they didn't get
9 removed? Are you assuming now that Monsanto didn't remove
10 those from that?

11 A Yes.

12 Q They are right there, aren't they, sir?

13 A They are, indeed.

14 Q In the same spot where they developed the
15 evidence of toxicity, correct, sir?

16 A You are saying what, sir?

17 Q They are right there in the same spot in the same
18 exposure, whatever it may be, when they developed signs of
19 toxicity, are they not, sir?

20 A No, sir, not necessarily.

21 Q Doctor, didn't we agree that they are not
22 removed?

23 A That's what we agreed on.

24 Q And we agreed that they will stay at that job,
25 sir?

1 Q Yes, and they are still there, they are not being
2 removed from this further exposure, are they, sir, by
3 Monsanto?

4 A Not from that job, sir, no.

5 Q But, Doctor, if there is exposure in that job, it
6 is that exposure which caused them to get the evidence of
7 toxicity, is it not, sir?

8 A When they developed their toxicity, yes.

9 Q Yes. And they are not removed from that, are
10 they, sir?

11 A No, sir.

12 Q And Doctor, are you assuming now that after they
13 developed the evidence of toxicity that Monsanto did
14 something with the process and changed the exposure or
15 changed the toxic substance that was being made?

16 A I am assuming that they could certainly do that,
17 sir.

18 Q Well, they could, Doctor, and are you assuming
19 that they did do it?

20 A I am assuming, because I know they did.

21 Q All right. Now, Doctor, this is the problem.
22 You are assuming that's not in this response, sir. They are
23 not saying that they are not removing the people because
24 they removed the contaminant or because they changed the
25 process. Their response is not that at all to their

1 recommendations that these workers be removed, is it, sir?

2 A Not as I have stated it.

3 Q Now, Doctor, I'm asking you to look at this
4 particular question and this particular answer, Doctor.
5 Within the parameters of this answer, they are saying, "We're
6 not going to remove these workers," aren't they, sir?

7 A Yes, they said they are not going to remove these
8 workers.

9 Q And nothing has changed, Doctor. If nothing has
10 changed from the time the worker developed the evidence of
11 toxicity, well, on a daily basis, nothing has changed. He
12 developed the toxicity within days, within minutes, within
13 hours, within weeks, within months, however long it took the
14 toxic evidence to develop in his case, and nothing has
15 changed in the interim. He is still being exposed, isn't he,
16 sir?

17 A Are you asking me to assume that nothing has been
18 changed?

19 Q I am indeed, Dr. Suskind.

20 A With the assumption--

21 Q Yes.

22 A --that neither the chemical process or the
23 hygienic process, which even is more important, sir, and they
24 did make changes. If you are asking me to assume that no
25 changes were made, and that's an assumption, then they are

1 exposed to the same exposure.

2 Q Yes.

3 A The same toxic material.

4 Q Yes. And the reason Monsanto gives in this
5 answer is not that that worker isn't going to be damaged by
6 further exposure, is it, sir? The reason they give is they
7 want--since he's been damaged already, it is okay for him to
8 continue to be damaged. They want to prevent others from
9 being damaged, isn't that what they're saying, sir?

10 A No, sir.

11 Q All right. Doctor, if you don't agree to that,
12 let's pass to the next point.

13 THE COURT: Before you get to the next point, is
14 this a good point for a short break?

15 MR. CARR: Yes, your Honor.

16 THE COURT: We will take a short recess at this
17 time and then resume testimony. I would remind you you are
18 not to discuss this matter among yourselves or with anyone
19 outside the Jury panel, or as of yet form any opinions or
20 conclusions about the matters on trial. The Court is in
21 recess.

22 (At this time, Court was in recess.)

23 BY MR. CARR:

24 Q Now, Doctor, with regard to the hygienic aspect
25 of this process, you recall we have previously established

1 that your institute was called upon to do a survey in 1953 to
2 make recommendations in the hygiene aspect, do you recall
3 that, sir?

4 A Yes, there was a report submitted.

5 Q And it is part of the Exhibit 1701 you made a
6 report, part of your 1953 report, is it not, sir?

7 A It is, sir, yes.

8 Q And in that survey, you pointed out among other
9 things that in--that the Building No. 34, for instance, dust
10 was generated in the process and recommendations made of
11 different things to be done in not just Building 34, but
12 others as well, do you recall that, Doctor? If you don't,
13 I'll direct you to the place where it is, do you recall it?

14 A I do recall. The total survey, which includes
15 more than just dust--

16 Q Oh, yes, indeed. But my question--

17 A I want to make sure that this is understood. It
18 was a total survey of the two buildings, 51 and 34.

19 Q It was established that it was a total survey and
20 your team made certain recommendations as to things that
21 should take place in those two buildings, 34 and 51.

22 A Yes, we did, sir.

23 Q And the recommendations you made were because you
24 found in that environment that there were 2,4,5-T and parts
25 of the 2,4,5-T process generating dust and vapors to which

1 the workers were exposed, did you not, sir? Dr. Suskind,
2 don't you recall that we established that and we went through
3 that once already, Dr. Suskind?

4 A Yes, I am looking at the materials that were--

5 Q Doctor, I'm asking you if you recall it now, sir.
6 If you recall it, we don't need to go back to it, sir.

7 A I recall that they did analyses and reports on
8 analyses of the organic chloride content of Building 51 and
9 the organic chloride in 2,4,5-T dust in Building 34.

10 Q And made certain recommendations aimed at
11 elimination of the organic chloride and dust in the air,
12 correct, sir?

13 A Elimination or to decrease the amounts which were
14 found, yes, sir.

15 Q Well, if you don't eliminate it, it is still
16 there and it can still be a hazard, can't it, sir?

17 A Not necessarily, it all depends upon levels,
18 sir.

19 Q Well, you do know that it was a hazard, you do
20 know that chloracne continued to be caused, to be generated
21 in those buildings, you know that, too, don't you, sir?

22 A Yes, sir.

23 Q All right. And, Doctor, when you did a--you were
24 called upon to do another survey of the process in 1954, and
25 we, that's Exhibit 1755 dated July 1, we went through that,

1 and you pointed out in that survey that, "New cases arise
2 currently in the 2,4,5-T synthesis, despite careful
3 reorganization of the process and institution of rigid
4 hygienic precautions," do you recall that, sir?

5 A I don't recall a report--'54--

6 Q July 1, 1954, signed by Buckley, Walker, and
7 Suskind. Give the witness, please, Debbie, Plaintiff's 1755,
8 if you need it to refresh your memory. Page 13.

9 A What page is it on, sir?

10 Q Page 13 of the July 1, 1954 report of the
11 Kettering Laboratory.

12 A Yes, sir, I have it here.

13 Q And it does say, as I read it, does it not, sir,
14 that, "New cases do arise currently in the 2,4,5-T
15 synthesis"?

16 A At that time, this is what we were told, sir,
17 yes.

18 Q Now, Doctor, then subsequently you did another
19 report in 1956, did you not, sir? That would be Plaintiff's
20 Exhibit 1759 in which you found that there were only minor
21 changes made and that the sources of exposure remained the
22 same and found in your sampling that the concentrations of
23 dusts and vapors in Building 34, "Have not changed
24 appreciably since the 1953 survey," do you recall that, sir?
25 Page 3 of Plaintiff's Exhibit 1759?

1 A Yes, I see that.

2 Q And Doctor, that states that the conditions are
3 the same in '56 as they were in '53, doesn't it, sir?

4 A Not necessarily.

5 Q Doctor, doesn't it say that, except for minor
6 changes, operations were found to be exactly as they were in
7 April, 1953, isn't that what your team reported, sir, on the
8 very first page of your report? When you say, "not
9 necessarily," that's exactly what you said, isn't it, sir?

10 A That is what I said.

11 Q That they were exactly the same?

12 A No, that isn't what was said.

13 Q Except for minor changes, sir, isn't that what
14 you said? The operations in Building 34 were found to be
15 exactly as they were in April, 1953, except for minor
16 changes and elimination of these Alsop filters, they were
17 exactly the same. And when you tested the concentration of
18 the dust and vapors, you found that they had not changed
19 appreciably, didn't you, sir? So we are talking about in
20 1956, aren't we, sir, with regard to hygienic precautions
21 taken by Monsanto in the--

22 A No, sir, no, sir.

23 Q In the manufacturing process, are we not, sir?

24 A No, sir.

25 Q Doctor, if they have not changed appreciably--

1 A They have changed, sir, to a degree.

2 Q Doctor, did you hear the word "appreciably"?
3 that you used?

4 A There was an explanation of it on that same page,
5 sir.

6 Q Doctor, I am not concerned about the explanation.

7 A Well, I am, sir.

8 Q We went through that. We have already examined
9 you on this point. I simply do not want to go through over
10 and over again establishing the same point twice. Did you
11 not in your report say, sir, "A comparison of the findings in
12 the present survey with those obtained in 1953 indicate that
13 the concentrations of dust and vapors in Building 34 have not
14 changed appreciably?"

15 A That is what we said with an explanation, sir.

16 Q Doctor, if they haven't changed appreciably, what
17 does the word "appreciably" mean, Doctor?

18 A It means significantly. However--

19 Q Now, Doctor, please, what you said--

20 A You are not allowing me to answer, sir.

21 Q That's correct, Doctor, because I don't want to
22 go down some other path.

23 A No, you don't want to hear the truth, sir.

24 THE COURT: Doctor, Doctor, I've asked you a
25 hundred times to respond only to what has been asked of you.

1 Gentlemen, could you approach the bench for a minute?

2 (The following conference was
3 held at the bench.)

4 THE COURT: One more response like, "You don't
5 want to hear the truth," and I may hold him in contempt.
6 That was outrageous. One more outburst like that and I may
7 very well put him under contempt. I will explain that to him
8 later. I want to have you talk to him over the lunch hour
9 and I will have him back in chambers later to talk to him.
10 Even a layman knows better than that, and he has a much
11 higher knowledge of what's going on than a layman does. This
12 is ridiculous. I want to make that for the record. I want
13 to ask you as an officer of the Court to talk to him again,
14 and if anything like that happens again, various parties will
15 regret it. Let's go.

16 (The following proceedings were
17 held in open Court.)

18 BY MR. CARR:

19 Q Doctor, because of the statement that you made, it
20 is just possible that some people in this courtroom might
21 believe that I don't want to hear the truth. Now, let's
22 establish the truth with regard to this report, shall we,
23 Doctor? Is it what you said in the sentence that I just
24 read, was that the truth, sir?

25 A That is the truth, sir, part of it. That's part

1 of the truth, sir.

2 Q Doctor, that is the truth, is it not?

3 A I'm saying it is part of the truth.

4 Q Doctor, everything is part of the truth. Now,
5 in that--

6 A No, not everything is part of the truth. In
7 this instance, it is part of the truth.

8 Q Was it the truth or not that the dust and vapor
9 conditions had not changed appreciably?

10 A It is part of the truth, sir.

11 Q And what other truth is there, Doctor, that you
12 are suggesting that I don't want to hear?

13 A Okay, may I read it?

14 Q Please do.

15 A The fact was that on January 10th, the highest
16 concentration of organic--this is 1956--was 2.25 parts per
17 million. It was found to be present on the reactor platform
18 while one of the reactors was being loaded, and the pH was
19 checked. This is less than half of the maximum
20 concentration, 5.6 parts per million found at this location
21 in 1953. So that in this instance, sir, for organic
22 chloride, an important factor, and I underscored this, an
23 important factor in determining differences, because the
24 2,4,5-T or the TCP would be organic chloride and it was
25 half the concentration in 1956. That's why I said part of

1 the truth, sir.

2 Q Let me suggest to you that you just read one of a
3 number of values, have you not, sir?

4 A I've read the most significant part.

5 Q Doctor, what you have read, the first sentence
6 interpreted not just that value, but a half a dozen or more
7 values that follow that in the next two and a half pages,
8 isn't that correct, sir?

9 A That happened to be significant--

10 Q Isn't that correct, sir?

11 A That is one of them, yes, sir.

12 Q Is the answer to my question correct, that you
13 just read one of several values?

14 A I read one, if you would like me to read more, I
15 will.

16 Q Doctor, would you just please answer my question,
17 sir? What you read was one of several values, did you not,
18 sir?

19 A That's true, sir.

20 Q Now, is it true that the first sentence, sir, is
21 the summary of all those values, sir, where it is stated a
22 comparison of the findings show that they haven't changed
23 appreciably.

24 A This was the general interpretation, sir.

25 Q Yes, and your team at that time interpreted all

1 the findings, did they not, sir?

2 A Yes, they did, sir.

3 Q And your team, of course, knew the significance
4 of whether it was chloride or whatever it was in this
5 atmosphere because they were going there for a purpose,
6 weren't they, sir?

7 A Yes, sir.

8 Q They were capable of interpreting the
9 significance of various findings, weren't they, sir?

10 A They were.

11 Q They were capable of not taking just one finding
12 out of context, but taking all of the findings and putting
13 them together and summarizing and interpreting all those
14 findings put together, weren't they, sir?

15 A No, sir.

16 Q They weren't capable of doing that?

17 A No.

18 Q Doctor, why did you say your team was not capable
19 of doing that?

20 A I didn't say that.

21 Q My question was, sir, were they not capable of
22 doing that?

23 A They were capable of doing that, but I--but--

24 MR. CARR: Your Honor, would you direct the
25 witness to respond to my question?

1 A Yes, sir.

2 THE COURT: Doctor--

3 MR. CARR: He has.

4 THE COURT: Doctor, just respond to the question,

5 again.

6 Q Now, Doctor, the first sentence of the section on

7 discussion says, does it not, "A comparison of the findings

8 in the present survey were those obtained in 1953 indicate

9 that the concentrations of dust and vapors in Building 34

10 have not changed appreciably"?

11 A That's what it reads, sir.

12 Q And, Doctor, is that not an interpretation of how

13 these findings from one year to the following two years

14 compare?

15 A In an overall estimate, yes.

16 Q And don't we have at that time then, sir, their

17 interpretation of what they consider to be significant rather

18 than your interpretation today of one finding, sir? Don't we

19 have their interpretation?

20 A That's their interpretation, that's not my

21 finding, sir.

22 Q My question is, sir, don't we have their

23 interpretation of the significance of all of these findings?

24 A That appears to be so, sir.

25 Q All right. Now, Doctor, they also found not just

1 that the comparison of the findings showed that it had not
2 changed appreciably, they also found that there had only been
3 in fact minor changes made, did they not, sir? On the first
4 page, Doctor, where they are talking about Building 34?

5 A That isn't what I read, sir.

6 Q And Doctor, Monsanto's--

7 A That isn't what I read, sir.

8 Q I'm sorry.

9 A I didn't read that which you said, sir.

10 Q You didn't read it? Doesn't it say the last
11 paragraph on the first page, doesn't it say, sir, and haven't
12 I read it already three times today, "Except for minor
13 changes and the elimination of the Alsop filters, the
14 operations in Building 34 were found to be exactly as they
15 were in April, 1953," isn't that what it says, sir?

16 A That's what it says.

17 Q Is your team capable of interpreting whether or
18 not conditions were exactly the same except for these minor
19 changes and elimination of these filters, are they capable of
20 doing that, sir?

21 A Yes.

22 Q And did they not give us their judgment as to
23 whether or not the conditions had changed in Building 34?

24 A Yes, especially in the second paragraph, sir.

25 Q All right. Now, Doctor, on December the 7th,

1 1955, Monsanto agreed and this was before this six months
2 before the report of July, I'm sorry, a year, no, I take it
3 back, this was three weeks or four weeks before the report
4 made on January, 1956 or the survey made in January of '56,
5 isn't that correct, sir?

6 A You will have to refresh my memory as to what you
7 are talking about, sir.

8 Q I know, December 7th of 1955 is approximately one
9 month before the survey that was made on January the 10th,
10 1956, is it not, sir? Doctor, I will give you the exhibit in
11 a moment. All I'm asking you, Doctor, is to acknowledge that
12 December the 7th, 1955 is approximately one month before
13 January 10th, '56.

14 A That would appear to be so, sir.

15 Q And the survey that we are just talking about
16 that you just finished talking about was a survey that they
17 conducted on January the 10th, '56, was it not, sir?

18 A Yeah, but the report was not until February, sir.
19 The report was--

20 Q Doctor, did I say the date of the report? I said
21 the survey was conducted on January the 10th, 1956, was it
22 not, sir?

23 A Yes, sir.

24 Q The very first page, sir?

25 A Yes, sir.

1 MR. CARR: Would you give the witness Plaintiff's
2 Exhibit 1757?

3 Q Now, Doctor, that's an exhibit that we have
4 previously discussed. It is signed by Mr. Soden. Does it
5 refresh your memory that Monsanto acknowledges that they had
6 not solved the chloracne 2,4,5-T problem?

7 A I will have to read it in order to determine
8 that, sir, if you will give me a few moments. Yes, sir.

9 Q Is that yes, sir, you are ready to be asked
10 questions, you agree that Monsanto acknowledged that they had
11 not solved the problem?

12 A Well, what is the question, sir?

13 Q My question was, do you agree that Monsanto had
14 acknowledged that the problem had not been solved by--as of
15 December the 7th, '55.

16 A I would agree that it had not been completely
17 solved, sir.

18 Q Doctor, do they use the words, "You also know
19 that the 2,4,5-T problem has not been solved, and chloracne
20 remains as the outstanding problem of the Nitro plant," isn't
21 that what they said, sir?

22 A Yes, and they go on to say there were three new
23 chloracne cases during the past year, that's a relative--

24 Q They say the present plant is considerably safer
25 than previous operations, did they not, sir? Did they say

1 that?

2 A Yes.

3 Q But that did not solve the problem, did it, sir?

4 A Well, not completely, sir. It didn't eliminate
5 the problem. But it certainly decreased the problem.

6 Q Well, Doctor, they didn't know that it decreased
7 the problem.

8 A Well, of course they do.

9 Q If you will read on, the next sentence, they say,
10 "We know there's been three new cases since a large
11 percentage of the men who have worked in this new department
12 had chloracne from previous exposure." Anyway, it is not
13 possible to say that they would not have contracted chloracne
14 in the new department.

15 A Correct.

16 Q Now, Doctor, how many men were in that department
17 to start with, do you know, sir?

18 A I have no idea.

19 Q You have no idea at all?

20 A No.

21 Q Whether it was ten, twelve, or a hundred?

22 A No, I have no idea, sir. My recollection is not
23 that good.

24 Q Doctor, if there were about twelve in that
25 particular department, over a given period of time, if you

1 had three new cases, that would indicate that there was a
2 turn over, wouldn't it, sir?

3 A Well, I don't know that there were twelve.

4 Q Doctor, you don't know then at all from this
5 document how much safer it has been made, do you, sir?

6 A How much what, sir?

7 Q From this document, you don't know how much safer
8 it has been made, do you, sir?

9 A Well, they seem to feel that a good deal of
10 progress has been made, sir.

11 Q Now, Doctor, even without disputing that point,
12 they say they--

13 A Doctor, may I finish my question, Dr. Suskind?

14 A Yes, sir.

15 Q They say, do they not, since a large percentage
16 of the men had chloracne already under the--working there,
17 that they did not remove these workers as recommended by
18 Doctors Birmingham and Denton? They didn't remove them, sir,
19 and since they already had chloracne, they couldn't tell
20 whether or not the department, whether or not they all might
21 not have contracted chloracne in the new department, isn't
22 that what they're saying, sir?

23 A No, sir.

24 Q Doctor, aren't they saying, well, since they had
25 it already and they are working in this new circumstance,

1 that we can't say because they've already got it, we can't
2 say whether the new department is that much safer or not,
3 isn't that what they are saying?

4 A No, sir.

5 Q You don't interpret it that way, Dr. Suskind?

6 A No.

7 Q Well, nevertheless, what we do know is that the
8 chloracne problem still exists, don't we, sir?

9 A They had several new cases of chloracne, sir.

10 Q And what we do know--

11 A A small number.

12 Q What we do know that as of June, '65 there wasn't
13 anybody in the department that did not have chloracne, isn't
14 that correct, sir? They all had it, according to Dr. Kelley,
15 isn't that correct, sir?

16 A Well, I can't recall that exhibit.

17 Q Exhibit 1758, would you give the Exhibit 1758?

18 A No, sir, he is asking a question, and there is no
19 answer here.

20 Q Oh, Doctor, he is saying, "I don't want to be
21 cynical, but are there any employees in the department who
22 don't have chloracne already?"

23 A He is asking a question.

24 Q Doctor, isn't he suggesting by the question that
25 he's asking that all the employees have chloracne?

1 A Not at all, sir.

2 Q You can't interpret it that way?

3 A My sense of logic doesn't interpret it that way.

4 Q You can't interpret it that way.

5 A Absolutely not. I think Dr. Kelley was being
6 cynical.

7 Q Yes, he was being cynical, wasn't he?

8 A He was being cynical because he didn't know what
9 was going on at Nitro, West Virginia.

10 Q The cynicism that he was showing is that lo and
11 behold, you tell me that you are only getting three or four
12 cases a year, but when added to the large percentage of
13 people that we've already got, that adds up to a hundred
14 percent of everybody. Is there anybody in the department
15 that doesn't have chloracne, that's what he is saying.

16 A He doesn't know the answer, sir.

17 Q Well, Doctor, I suggest--

18 A And I can tell you what the answer is through our
19 1979 study.

20 Q Doctor, I suggest to you that Dr. Kelley was the
21 man in charge of the medical department
22 in 1965, wasn't he, sir?

23 A Corporate Medical Department, sir.

24 Q Well, isn't that what I said?

25 A No, you said medical department.

1 Q He was in charge of the medical department,
2 wasn't he, in 1965?

3 A There is a medical department at Nitro, and he
4 was not in charge of that.

5 Q He was in charge of the whole ball of wax, he was
6 in charge of the entire medical department of Monsanto,
7 wasn't he, sir?

8 A So what?

9 Q Would you answer my question, please?

10 A Yes, he was.

11 Q It is his responsibility to know what is going on
12 in this plant with regard to the health and safety of these
13 workers, is it not, sir?

14 A It would be his responsibility, sir, yes.

15 Q Not would be, it was. That's his obligation,
16 that's his--probably his only responsibility, is to the
17 health and safety of these workers, isn't that correct, sir?

18 A That is one of his responsibilities.

19 Q Doctor, it would certainly be his only, if not
20 his chief and major responsibility, wouldn't it, sir?

21 A No, it is not his only responsibility.

22 Q Doctor, the medical department's responsibility
23 is for the health and safety of the workers, the health of
24 the workers, eliminate the safety, isn't that correct, sir?

25 A No, it is safety as well.

1 Q Well, the health and safety then, that is his
2 responsibility, that is the responsibility of the medical
3 department.

4 A That is the major responsibility of the medical
5 department, yes, sir.

6 Q And Doctor, he should know if he is doing his
7 job, he should know, should he not, sir, the chloracne status
8 of the workers in that department?

9 A You are correct, sir, he should know.

10 Q Yes, Doctor. Now, you also know that as late as
11 1984 and '83, when--and we went through this the other day,
12 they found TCDD on the motors, on the base of the stairs, all
13 kinds of places in the Building 78 and 79. We went through
14 that. Do you recall that, sir?

15 A I believe we went through it, sir.

16 Q All right, Doctor. That doesn't indicate, does
17 it, sir, that the process was cleaned up, that it was not
18 spewing out TCDD, does it, sir?

19 A That has nothing to do with it, sir.

20 Q Doctor, would you answer my question, please,
21 sir?

22 A My answer is no, sir.

23 Q Did they find TCDD, sir, in the buildings at that
24 time as we previously established?

25 A They found some TCDD in the building.

1 Q And it was still being generated in the process,
2 wasn't it, sir?

3 A No, when they did--when they did the sampling
4 was long after the process had been stopped and changes had
5 been made in that building and, for example, if there were
6 material--

7 Q Doctor, let me interrupt you. You didn't even
8 know about Building 79 until I asked you about it. You said
9 you didn't even ask the workers in your health study in 1979
10 about Building 78 and 79.

11 A Yes, we did.

12 Q And now all of a sudden--

13 A Yes, we did.

14 Q Doctor, you testified under oath as to the
15 building we established--did you not ask about Building 79,
16 don't you recall that?

17 A We did ask about Building 79, you asked me, sir,
18 whether or not I felt that if somebody was exposed to
19 Building 79, they were exposed, that's what you asked me.
20 Let me correct you, sir. That's what you asked me.

21 Q Doctor, you don't recall that you didn't even
22 know about Building 79?

23 A I do know about Building 79. You made my
24 recollection accurate.

25 Q And when did you learn about Building 79?

1 A I had known about Building 79 back in 1979 when
2 we did our study, sir.

3 Q And Doctor, you knew at the time if the person
4 worked in Building '79, he would be exposed to TCDD, would he
5 not, sir?

6 A He might be. It all depends what he did there,
7 sir.

8 Q Doctor, we have gone through that at great
9 lengths. He can well be exposed to TCDD, could he not, sir?

10 A No, sir.

11 Q He couldn't be, Doctor?

12 A No, sir.

13 Q Doctor, didn't you agree upon, under cross
14 examination, that if he works in that building that he could
15 well be in the exposed group, sir?

16 MR. HEINEMAN: May counsel approach the bench?

17 THE COURT: Yes, you may.

18 (The following conference was
19 held at the bench.)

20 MR. HEINEMAN: Didn't Mr. Carr previously tell
21 the Court that when he went to a section of transcript in
22 order to impeach the witness, he always gives the citation?

23 THE COURT: Right.

24 MR. HEINEMAN: I didn't hear one. May I have
25 one?

1 THE COURT: He hasn't gotten to the point where
2 he needs to do it yet. The proper way to impeach is to ask,
3 and if he persists in that, then he gives him the impeaching
4 material, and at that point in time is when the impeacher
5 needs to give the citation of that which he is reading to
6 impeach.

7 MR. HEINEMAN: Your Honor, when I was doing it
8 with Dr. Carnow, you made me respond to Mr. Carr as he would
9 ask aloud in court for a citation when I began it. You made
10 me give that to him then.

11 THE COURT: When you began recitation of the
12 impeaching material. You need not respond before that period
13 of time. There were times, especially after certain
14 questions were asked upon the existence of documents which I
15 found out in conferences at the bench counsel did not know if
16 they existed or not, and I insisted upon citation of that.
17 That is different than the type of impeachment citation
18 called for at that time, the objection is overruled.

19 MR. HEINEMAN: May I have the citation?

20 MR. CARR: I don't have it yet. We didn't
21 impeach him yet.

22 MR. HEINEMAN: You're asking him didn't he
23 testify about something.

24 MR. CARR: He said he did not, that may be true
25 that he did not, I am not prepared to impeach him.

1 THE COURT: It is after lunch. Why don't we take
2 this up after lunch?

3 (The following proceedings were
4 held in open Court.)

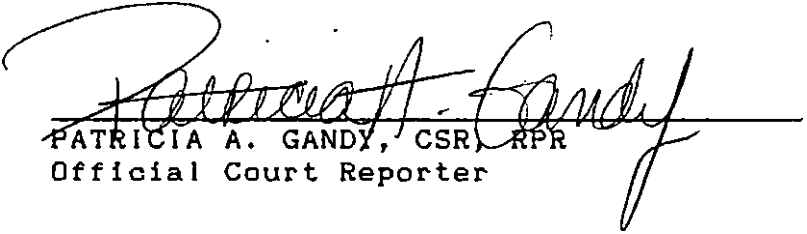
5 THE COURT: Ladies and gentlemen, we are going to
6 break for lunch at this time. We will resume again at 1:15.
7 I will remind you that the admonishments that I gave you
8 earlier will apply during this lunch break also. Court is in
9 recess for lunch.

10 (At this time Court recessed
11 for the noon hour.)
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1 STATE OF ILLINOIS)
2 COUNTY OF ST. CLAIR) SS.
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7 I, Patricia A. Gandy, CSR, RPR, Official Court
8 Reporter in and for the Twentieth Judicial Circuit, and the
9 Official Court Reporter who transcribed the above-styled
10 cause had on March 25, 1986, do hereby certify that the
11 foregoing transcript of proceedings is a true, correct and
12 complete transcript of the proceedings had on said date.

13 DATED this 31st day of March, 1986.

14
15 
16 PATRICIA A. GANDY, CSR, RPR
17 Official Court Reporter
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1 STATE OF ILLINOIS)
2) SS.
3 COUNTY OF ST. CLAIR)
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7 I, RICHARD P. GOLDENHERSH, Circuit Judge in and
8 for the Twentieth Judicial Circuit, hereby certifies that the
9 above is a true and correct transcript of the proceedings had
10 in the case captioned: FRANCES E. KEMNER, et al., v.
11 MONSANTO COMPANY, Cause No, 80-L-970, heard on March 25,
12 1986.

13 DATED this 31st day of March, 1986.
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15 ENTER:
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18 RICHARD P. GOLDENHERSH, Circuit Judge
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