

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 March 17, 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
 On Behalf of the Defendant.

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23 Debra M. Musielak, CSR, CM
24 Official Court Reporter

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EXHIBITS SUBMITTED ON BEHALF OF THE PLAINTIFF

Plaintiff's Exhibit No.:

1754A	(blow-up 1754)	35		36
1775	(Stover records)	29		31
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1 BE IT REMEMBERED, that on the 17th day of March,
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 (The following proceedings were had in Chambers, outside the
10 presence of the jury.)

11 THE COURT: Okay. Anyone else have anything else
12 they want to say on this motion before I rule? I didn't see
13 any memorandum from you, so I assume you decided not to file
14 one.

15 MR. CRAVEN: We decided after Mr. Carr joined in
16 the motion that there would be no necessity for one.

17 THE COURT: Fine. Anyone have anything else to say
18 on it?

19 MR. CARR: No, Your Honor.

20 THE COURT: Okay. I have reviewed and thought
21 about what was said in our discussions with this juror, and I
22 have looked at some law on the matter. I think this is a
23 discretionary decision on my part, and after reviewing what
24 was done, after having observed this juror in her answers, as

1 well as looking at the substance in her answers, and taking
2 into account the fact that counsel have agreed on this
3 motion, I think that there -- that under the circumstances I
4 am denying this motion at the time. I see hypothetically the
5 possibility that at some point in time this juror may in fact
6 become prejudiced. And I am going to monitor the case that
7 is involved that brought this whole thing up, and I'm going
8 to monitor her, in effect, and I think that this motion is
9 subject to renewal. However, on the basis of what was said,
10 and the manner in which it was said, and taking all of those
11 factors into account, at this point in time, I am denying the
12 motion.

13 I note that there is agreement of counsel on this
14 motion to get rid of this juror. And, I also note that there
15 are two alternates left, out of six that were picked, that we
16 still have a good amount of this case to go, and on the basis
17 of what has happened so far, one can make estimates, but one
18 is sort of in quicksand as far as making time estimates as to
19 the end of this.

20 I will agree to the motion to remove the juror at
21 this time if there is agreement by counsel that there be a --
22 if there is a stipulation by counsel to a verdict by eleven
23 jurors, otherwise at this point in time, on the basis of the
24 record, as it has been made in front of me at this point in

1 time, I stand with the denial on the motion.

2 I think this is a serious matter. I think that
3 obviously there has been requests when this came up before to
4 confer. I'll give each of you five minutes to confer with
5 your co-counsel and then you let me know what you want to
6 do.

7 MR. CARR: All right, Your Honor.

8 MR. CRAVEN: Could you make that ten?

9 THE COURT: Okay. I'll make it ten.

10 MR. CRAVEN: Five minutes and serious didn't seem
11 to be --

12 THE COURT: Well, okay.

13 (Following a recess, these proceedings were had in Chambers,
14 outside the presence of the jury.)

15 THE COURT: Well, what have you decided?

16 MR. CARR: The Plaintiffs are willing to stipulate
17 that eleven may decide the case, Your Honor.

18 THE COURT: Gentlemen, what have you decided?

19 MR. HEINEMAN: Well, Your Honor, the Defendants are
20 not willing to stipulate that eleven may decide the case.

21 THE COURT: Okay.

22 MR. HEINEMAN: Our motion is that what the Court
23 has suggested is that if the defendant would so stipulate,
24 the Court would remove this witness for cause. And, --

1 THE COURT: No, that's not what I suggested. I
2 said I would remove her by agreement.

3 MR. HEINEMAN: The position of this party is that
4 the juror should be removed for cause. That cause does not
5 change by virtue of any waiver by Monsanto of its rights, and
6 we feel that what the Court is suggesting is to extract from
7 us a waiver of our right to a twelve-person jury and we are
8 not willing to do that.

9 Further, we are concerned about the Court's
10 suggestion of monitoring both the progress of that case, and
11 this juror's reaction to it. It sounds like something that
12 would be done outside the record and ex parte insofar as the
13 attorneys are concerned.

14 THE COURT: Not at all. Let me clarify that, if
15 you have that in your mind. I'm not going to talk to that
16 juror ex parte. I am going to keep an eye on the record of
17 this other case, when it is -- it's something that's
18 available to all of us if you want to wade through five file
19 folders, and I'm not intending to do anything ex parte. I
20 wouldn't do anything ex parte. That monitoring is just as
21 available to you as it is to me. Perhaps that was inartfully
22 put by me, but, that juror's sitting there in full view of
23 all of us. This file is something that is on file either in
24 the Clerk's Office or with the judge to whom it's assigned

1 and it's available for monitoring by you just as it is
2 available for monitoring by me. And that is what I have in
3 mind, and that comment -- that's what I intended. Apparently
4 it was inartfully said because it gave you the impression
5 that I intended to do something ex parte, and I have no
6 intention of doing so. So hopefully it is now clarified for
7 all of us. I'm sorry if I misled you on that. I didn't
8 intend to.

9 MR. HEINEMAN: Okay. Monsanto believes that in any
10 event a mistrial would be subordinate to what we believe are
11 the requirements for a fair trial.

12 THE COURT: I agree with that.

13 MR. HEINEMAN: Therefore, we think the juror should
14 be excused.

15 THE COURT: I agree that a mistrial is subordinate
16 to the requirements of fair trial. You haven't made, at this
17 point in time at least, there has been no case made for
18 removal of this juror. So, I disagree with you as to the
19 assessment of what's happened with this juror so far. Okay.
20 Let's go to trial.

21 MR. HEINEMAN: Your Honor, there is one more thing
22 we'd like to raise briefly on the record. We are -- we would
23 raise again for the Court our objection that the examination
24 by Mr. Carr of this witness is repetitious; that it's

1 harassment of the witness. He has now taken eight days to
2 cover what we covered in an hour and a half, and we would
3 request the Court again to exercise its discretion, to
4 request from the Plaintiffs' counsel some sort of a
5 limitation or some sort of a statement of how long this is
6 going to go on, this cross examination is going to go on. We
7 feel it's being dragged out, and I think the record
8 demonstrates that, and we object to it, and we would request
9 the Court to make that request of the Plaintiffs' counsel.

10 THE COURT: I've got no problem with making a
11 request. Do you have any idea how much longer this will
12 take?

13 MR. CARR: No, Your Honor, because it depends
14 completely on the way the witness answers the questions. If
15 the witness answers the questions the way he has in the past,
16 it would be an indefinite period of time. I don't know. But
17 every question that the Court knows, every question is met
18 with an evasiveness answer, not responsive answer and answer
19 that goes beyond, answer that brings up a new matter that was
20 not covered by the question, some other extraneous statement
21 that has to be made straight, and I wish I could say that I
22 knew when I would been through. All I can do is promise the
23 Court an expeditious examination, controlled completely by
24 the Defendant's witness' willingness to respond to the

1 questions. I'll do my best to push on.

2 THE COURT: I think we went through this Tuesday or
3 Wednesday. I don't remember which day, but we did go through
4 it last week and as I stated then, and I'll restate briefly,
5 and incorporate what I said then, I would like nothing better
6 than to put some time limits on a lot of things that are done
7 in this case, including this cross examination. This witness
8 has deliberately been evading questions, has been defying
9 this Court's request to answer questions and has otherwise
10 through his lack of adherence to basic rulings made any
11 estimate by me of the time that it would logically take or
12 empirically take to cover a given area virtually impossible.
13 I've got no problem with putting time limits on various
14 things in the exercise of my discretion. I've done it
15 before. I've got no problem with your request except for the
16 fact of due to the actions of this witness, there is no basis
17 upon which I can make a reasonable and rational and
18 experienced-based assessment on how long something should
19 take in order to figure out how much of a time limit I should
20 give. I wish that weren't true because I would like to put a
21 time limit on it, however, I don't think that I can under the
22 circumstances.

23 And I say again as I did last week, whenever that
24 was, that if his behavior changes so that he is in fact

1 responsive to the questions that are asked -- and it hasn't
2 changed -- it did not change in the time period between when
3 we had this discussion last and this morning, then I will be
4 happy to do so. However, based on his present actions and
5 lack of actions, I don't have a basis to make any kind of
6 assessment and I'm not going to take just a shot in the dark
7 and take a time out of the air, just pull a time limit out of
8 the air as an arbitrary number within which to put any type
9 of limitation on this examination. So, hopefully, the
10 circumstances will change so that I can comply with your
11 request. I would like to comply with your request at this
12 point in time, because of the actions of this witness, I am
13 incapable of complying with your request. If that changes in
14 my opinion, I will on my own motion let you know that I feel
15 it's changed so to that extent and we will continue this
16 discussion as far as the type of limit that should be
17 imposed. As of Wednesday afternoon, it had not changed. And
18 so, again, your request is denied on that basis.

19 MR. HEINEMAN: Your Honor, may we respectfully
20 disagree with the Court's assessment of the witness'
21 performance? We believe it's a deliberate attempt by Mr.
22 Carr to harass the witness, and we made that position clear
23 in the record.

24 THE COURT: You have.

1 MR. HEINEMAN: Further, we would for the record
2 object to going forward with this juror on the panel. I
3 wanted to make sure that it was clear.

4 THE COURT: I don't think you've waived a thing. I
5 think your position has been crystal clear throughout. Your
6 objection is overruled. Gary Crummer, the juror with the bad
7 arm, has to go see his doctor over the noon hour so we are
8 going to break around quarter to twelve and resume around
9 1:30, because his doctor is up in Edwardsville. It's going
10 to take that long to get up there and back
11 (The following proceedings were had in open court.)

12 THE COURT: Okay. I'm sorry that we are starting
13 so late, but we had -- you've heard this before -- we had
14 some matters that had to be taken up in Chambers outside the
15 presence of the jury. We have resolved those and we are
16 ready to proceed.

17 THE COURT: Mr. Carr.

18

19

RAYMOND SUSKIND

20 (being called as a witness on behalf of the Defendant, having
21 been previous sworn, having resumed the stand, continued to
22 testify as follows)

23

CROSS EXAMINATION

24

BY MR. REX CARR

1 Q. Dr. Suskind, you have Mr. Selby's 1979 report,
2 Plaintiff's Exhibit 1741, in front of you? If you could turn
3 to Page 18, he notes that he has a decreased ability to
4 achieve and maintain an erection that he dates back to 1949,
5 does he not, sir?

6 A. Yes, I see that, sir.

7 Q. And he also continues to have that complaint in
8 1979, did he not, sir? Turn to Page 23 where it states he
9 has difficulty with erection. Do you see that, sir, at the
10 top of Page 23, Dr. Suskind?

11 A. Yes, I see that, sir.

12 Q. And that is another problem that did not go away
13 with time, did not clear with time, if this record is true
14 and correct, isn't that correct?

15 A. No, sir.

16 Q. Sir?

17 A. No, sir.

18 Q. Did you hear what I said, Doctor? If the record is
19 true and correct?

20 A. Yes, sir.

21 Q. If the record is true, he had it in 1949, did he
22 not, sir?

23 A. He had it in 1949.

24 Q. And if the record is true, he has it in 1979, does

1 he not, sir?

2 A. Yes, he had it in 1979, yes, sir.

3 Q. And if he had it in '49 and had it since '49, and
4 has it in '79, then that is a problem that did not clear in
5 that thirty-year period of time, isn't that correct?

6 A. No, sir.

7 Q. Doctor, are you assuming that he has it in 1979?

8 A. I am assuming that, sir.

9 Q. Are you assuming that it started in 1949?

10 A. I am.

11 Q. And are you assuming then that he had it in '49 --

12 A. May I correct myself? May I correct myself?

13 Q. Yes, please.

14 A. No, I am not assuming that started in 1949. The
15 same problem that he had in '79, could be due to age. This
16 man is 69 years old at this time and it doesn't necessarily
17 have to be the same problem, sir.

18 Q. Oh, I agree, Doctor, doesn't necessarily have to be
19 the same problem, but it is the only problem that is
20 described in this exhibit that is the problem that he says he
21 noticed that it started in 1949, correct, sir?

22 A. He had it in 1949, sir, yes.

23 Q. My question is, he says that it started in 1949,
24 did he not, sir? He noticed a change in his sex life that

1 started in 1949, does he not, sir?

2 A. No, sir, it didn't say it started, it said that's
3 when he noticed it first in '49. There is nothing here that
4 says it started. It says in 1949 he noticed a change in his
5 sex life, yes.

6 Q. And that change that he noticed was decreased
7 ability to achieve and maintain erection, was it not, sir?

8 A. At the time, yes, sir.

9 Q. Yes. Now, that is something that as far as he was
10 concerned started in 1949, that's when he first noticed the
11 change, isn't that correct?

12 A. No, sir.

13 Q. Isn't that what it says here, Dr. Suskind?

14 A. Yes, that's what it says.

15 Q. Now, Doctor, are you taking what he says there as
16 true and correct and he's not lying?

17 A. I am indeed, as of 1949, sir, yes.

18 Q. Are you taking that he would know whether or not he
19 had a decreased ability to achieve and maintain an erection
20 at that time?

21 A. Yes.

22 Q. Because otherwise you wouldn't be asking the
23 question, would you, sir?

24 A. Correct.

1 Q. All right. So now he said that he noticed a change
2 in his sex life that started in 1949, isn't that correct,
3 sir?

4 A. No, sir.

5 Q. Doctor, did you ask him when the decreased ability
6 to achieve and maintain erections started?

7 A. We asked him when he first noticed --

8 Q. No, Doctor, you asked him more than that. On the
9 fifth question down, sixth question down, did you ask this
10 question. "Decreased ability to achieve and maintain
11 erection. Yes or no. If yes, when?"

12 A. Right.

13 Q. And, Doctor, he answered the question, yes, he has
14 a decreased ability to achieve and maintain erection and when
15 asked the question when, he said 1949, did he not?

16 A. Yes, sir. Yes, sir.

17 Q. Now, Doctor, he has, according to this record, he
18 had that problem in 1949, right, sir?

19 A. He had that problem in 1949.

20 Q. And Doctor, in the sexual history record, is there
21 any indication that it ever changed back to a normal
22 condition? Doctor, would you look at this record? By this
23 record I mean Exhibit 1741, your 1979 record?

24 A. Yes, sir.

1 Q. Are you looking at that, Doctor, because I noticed
2 you thumbing through other papers, sir?

3 A. Yes.

4 Q. Now, Doctor, according to your 1979 record, he
5 noticed a change in his sex life that started in what year?

6 A. He noticed a change in his sex life in 1949.

7 Q. And, Doctor, is there any indication there that
8 there was another change in his sex life other than this
9 change that occurred according to him in 1949?

10 A. Would you repeat the question, please?

11 (Court Reporter read the previous question.)

12 A. Not in this record, sir.

13 Q. Doctor, do you have any record of a 1979
14 examination?

15 A. Not in 1979, sir.

16 Q. Now, Doctor, this -- and in 1979, in 1949, how old
17 was this man, sir?

18 A. This man was 39 years old.

19 Q. Yes. Now, Doctor, 39 is certainly a young age to
20 have a decreased ability to achieve and maintain erection, is
21 it not, sir?

22 A. Yes.

23 Q. And, Doctor, this difficulty with erection is
24 described on Page 23 as being present in '79 as well, is it

1 not, sir?

2 A. Yes, sir.

3 Q. Now, Doctor, is there anything in this record to
4 indicate that his decreased ability to achieve and maintain
5 erection that started in 1949 changed for the better or for
6 the worse in the ensuing thirty-year period of time?

7 A. Not in this record, sir.

8 Q. All right. Doctor, according to your 1979 record
9 then, if the condition changed to one of decreased ability to
10 achieve and maintain erection, according to this record then,
11 it continued until 1979, isn't that correct, sir?

12 A. No, sir.

13 Q. Is there anything in the record to indicate that it
14 changed back to normal, sir?

15 A. No, sir.

16 Q. You have only a record that says it changed in 1949
17 and you have nothing in the record to indicate that it
18 changed back in this 1979 report, isn't that correct, sir?

19 A. That's true, sir.

20 Q. Is there an affirmative statement in any other
21 record, sir, that his sex life returned to normalcy?

22 A. In the 1953 record, sir, there -- among the current
23 complaints, current complaints in '53, decreased libido and
24 inability to maintain an erection is not mentioned, sir.

1 Q. Doctor, he mentions that he had his loss of libido
2 following-- this year, following this exposure, does he not,
3 sir?

4 A. Yes, sir.

5 Q. And, Doctor, the complaints that he had currently
6 in 1953 were fatigue, the pains in the legs, the depression
7 and the recurrent vertigo, was it not, sir?

8 A. That's correct. That's how the record reads.

9 Q. And, Doctor, is there anything now in 1979, and in
10 1979 he says that this decreased ability commenced in '49,
11 correct, sir?

12 A. No.

13 Q. Doctor, didn't we just go through this? Didn't he
14 say -- didn't you ask him when it started?

15 A. (indicates affirmatively.)

16 Q. And didn't he say --

17 A. When it --

18 Q. It started in '49?

19 A. No.

20 Q. Doctor, we just went through it. Would you look at
21 the sixth line again, sir. Don't you ask him when his
22 decreased ability to achieve and maintain the erection
23 started? Don't you ask him that, sir?

24 A. No.

1 Q. Doctor, what do you ask him in that sixth line on
2 Page 18?

3 Q. On the sixth line we asked him when he noticed,
4 when he first noticed.

5 Q. No, that's the first line, you asked him have you
6 noticed any change in your sex life, if yes, give years. And
7 that's when he noticed it in '49 according to that, correct,
8 sir?

9 A. That is true.

10 Q. Now, that's the question that relates to when he
11 noticed it?

12 A. Correct.

13 Q. Now, you asked him an additional question, don't
14 you, sir?

15 A. Right.

16 Q. You asked him whether or not he had had decreased
17 ability to achieve and maintain erection, correct, sir?

18 A. Correct, sir.

19 Q. And he answers yes, doesn't he, sir?

20 A. Correct.

21 Q. And then you asked him when he had that problem,
22 don't you, sir?

23 A. Correct.

24 Q. And he says 1949?

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A. Correct.

Q. Now, that doesn't say notice, does it, sir?

A. No.

Q. That says when he had this particular problem, correct, sir?

A. When he noticed it.

Q. No, Doctor, the notice is in the first line, that's the word in the first line, isn't it, sir? You don't have the word notice in the sixth line, do you, sir? You are asking a factual question. You have decreased ability to achieve and maintain erection? He says -- the question is, do you have a decreased ability to achieve and maintain erection, and he says yes, doesn't he, sir?

A. Correct.

Q. And then you ask him when did he have it, when did it start, correct, sir?

A. Correct, 1949.

Q. That -- yes. Now, Doctor, he also says on Page 23 that he had a decreased -- that he had difficulty with erection, correct, sir, but no loss of desire, he has the desire, but he can't achieve an erection, isn't that correct, sir?

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

1 Q. Yes. And, Doctor, if he had, as he said on Page 23
2 and 18 that he has this difficulty with erection, and if it
3 started in 1949, then it is a problem with those two ifs that
4 did not clear up with time, isn't that correct, sir?

5 A. No, sir.

6 Q. Doctor, if he has it, and he had it starting in
7 1949, are you assuming that he has it, sir, in 1979?

8 A. He has the same kind of problem, sir.

9 Q. Are you assuming that he has the problem, that is,
10 difficulty with erection?

11 A. He has the same kind of problem, sir, yes, sir.

12 Q. My question are you assuming that he has the
13 problem of difficulty with erection.

14 MR. HEINEMAN: Objection, Your Honor, he just asked
15 that and answered it three times.

16 THE COURT: Objection is overruled. It's not
17 responded to.

18 Q. (by Mr. Carr) Are you assuming that in '79 he had
19 the problem "difficulty with erection?"

20 A. Yes, I'm assuming that.

21 Q. Are you also assuming that he had the problem that
22 started in 1949, sir, of difficulty with erection?

23 A. No.

24 Q. Now, Doctor, I want you to assume --

1 A. Are you asking me to assume it?

2 Q. Yes. I want you to assume that what he said in
3 this record, sir, is true, when he was asked the question,
4 "Do you have decreased ability to achieve and maintain
5 erection," and he said, yes. If yes, when. In 1949, sir.

6 A. Yes, sir.

7 Q. I want you to assume that that's true.

8 A. That's true, sir.

9 Q. Now, if that is true, sir, and if he has in 1979
10 the problem of difficulty with erection, it's a problem that
11 did not clear up and go away, isn't that correct, sir?

12 A. No, sir.

13 Q. The problem "Difficulty with erection," are you
14 assuming he had it in '49?

15 A. Yes.

16 Q. Are you assuming he's got it in '79?

17 A. I am, sir.

18 Q. Then that problem, difficulty with erection, did
19 not go away, if he has it in '79, isn't that --

20 A. No, sir. No, sir.

21 Q. Doctor, are you assuming he's got the problem?

22 A. I am, sir.

23 Q. Difficulty with erection?

24 A. I am sir.

1 Q. And he's got it, it's there?

2 A. That problem is there in '49.

3 Q. And he's got that problem and it's a problem that
4 he had in '49, correct, sir?

5 A. Yes.

6 Q. And a problem in '79 that he's still got, it didn't
7 go away, did it, sir?

8 A. No, sir.

9 Q. Doctor, are you assuming he's got it in '79?

10 A. Yes, I am.

11 MR. HEINEMAN: Objection. Asked and answered.

12 THE COURT: Objection sustained, it has been.

13 Q. (by Mr. Carr) It's a present continuing problem
14 that he has in '79?

15 A. Would you repeat the question?

16 (Court Reporter read the previous question.)

17 A. No, sir.

18 Q. Doctor, I've asked you to assume that, sir, that
19 this record if true, sir, -- would you please assume that,
20 Doctor?

21 A. Yes, I am.

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

24 THE COURT: Yes, you may.

1 A. I am assuming.

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

4 MR. HEINEMAN: I object to the question of counsel
5 and I object to his request to the witness to assume
6 something, because Mr. Carr changed the question. He
7 previously asked him to assume it. He asked him to assume
8 that he had the problem in 1979.

9 THE COURT: Right.

10 MR. HEINEMAN: Now he's saying didn't I ask you to
11 assume it was, that he had it and it was continuing. He used
12 the term continuing the second time.

13 THE COURT: And then he said no, and now he's
14 asking him to assume that, and that's when you objected.

15 MR. HEINEMAN: All right.

16 THE COURT: What are you objecting to?

17 MR. HEINEMAN: I'm objecting to his asking the
18 witness to assume that it is continuing on the basis that
19 there is no evidentiary basis that it's continuing. This
20 witness has testified that the man had a problem in '49. He
21 has a problem in '79. He didn't report it in '53. He's
22 testified that he didn't report it in 1953. And that,
23 therefore, there is no evidence that it's continuing. In
24 addition, he's also said that the man is 69 years old.

1 THE COURT: I heard all that.

2 MR. HEINEMAN: In 1979, therefore, there may be a
3 totally different cause. So it's not right to say it's a
4 continuing problem.

5 THE COURT: No, he has already also testified that
6 this witness -- twice as a matter of fact, because he denied
7 and he had to go through it again. He also testified that in
8 '79 he answered to that form, this man Selby, said that it
9 started in '49. So there was an evidentiary basis upon which
10 Mr. Carr can ask him to assume that, and your objection is
11 overruled on that basis.

12 MR. CARR: Thank you, Your Honor.

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

14 Q. (by Mr. Carr) Now, Doctor, are you assuming that
15 he had the problem in '49, starting in '49, and continued in
16 '49 -- it continued up to '79, are you assuming that, sir?

17 A. (No response)

18 Q. Are you assuming that, sir?

19 A. Now, if he had the problem in '49, if it started in
20 '49 and if it continued up into '79, you are asking me to
21 assume that?

22 Q. That's what I'm asking you to assume.

23 A. You are asking me to assume that it continued?

24 Q. That's what I'm asking you.

1 A. Even though the record doesn't say that?

2 Q. The record does say that. You've said that it says
3 that.

4 A. No, I did not.

5 Q. You most certainly did because your form said that,
6 sir.

7 A. No, I didn't.

8 MR. CARR: Your Honor, would you direct the witness
9 that he did say that it started, that the man said that he
10 had the problem started in '49, and that it continued up
11 through '79?

12 MR. HEINEMAN: Objection?

13 A. Doesn't say continued, sir.

14 THE COURT: If you have an objection, approach the
15 bench.

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

18 MR. HEINEMAN: This is more of Mr. Carr's games.

19 MR. CARR: We just went through --

20 MR. HEINEMAN: No, you started, now you are saying
21 started and continued.

22 THE COURT: Right.

23 MR. HEINEMAN: The man is objecting to the
24 continued. He says that it's a different problem. He says

1 1953 demonstrates that it went away.

2 THE COURT: I don't have this -- which of these
3 lines?

4 MR. CARR: Sexual history. Have you noticed any
5 change? He said, yes, '49. Do you have decreased ability to
6 achieve and maintain? If yes, when? '49.

7 MR. HEINEMAN: Doesn't say --

8 MR. CARR: Over here on Page 23, he has right there
9 difficulty with erection. That's a current problem.

10 MR. HEINEMAN: There isn't any doubt, Your Honor,
11 that he has said that he had it in '49 and he said that he
12 has it in '79.

13 THE COURT: Right.

14 MR. HEINEMAN: What the witness is objecting to is
15 the continuing aspect. He has not testified that it has
16 continued.

17 MR. CARR: I've asked him if in the record there
18 was any note in this record, in the '79 record that there was
19 any change back from the '49 condition and --

20 MR. HEINEMAN: That's just gamesmanship.

21 MR. CARR: Let me finish. He has said there is
22 nothing in this record to indicate that it went back to a
23 normal condition from what it was in '49.

24 MR. HEINEMAN: That's right. That's right.

1 MR. CARR: Therefore it is a logical assumption
2 that it continued from that time to the present.

3 MR. HEINEMAN: That's just a game. Mr. Carr knows
4 it, because the witness referred him to the 1953 record where
5 the guy didn't describe it at all.

6 THE COURT: Unfortunately the gamesmanship is on
7 this witness' part. We have twice this morning gone through
8 and he has finally agreed that the record reflects that this
9 man said that it started in '49, according to the way he
10 answered the questions on Page 18. Now, he is refusing to
11 accept the assumption. There is an evidentiary basis for him
12 to accept the assumption due to what is noted on Page 18,
13 which has been gone through twice this morning. It was gone
14 through Wednesday also, unfortunately, and I am going to,
15 over your objection, order him to accept that assumption.

16 MR. HEINEMAN: Which assumption is that, that it's
17 continuing?

18 THE COURT: Yes, I'm going to order him to accept
19 that assumption. There is an evidentiary basis in the record
20 for him to make that assumption, to have him accept that
21 assumption. The evidentiary basis is the answer and the
22 questions that are noted of Page 18, whatever that exhibit
23 is.

24 MR. CARR: 1741.

1 THE COURT: In which we have gone through twice at
2 this point. So with that, your objection is overruled. I'm
3 going to order him to accept the assumption that it is --
4 that the man said that it is continuing.

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

6 THE COURT: Dr. Suskind.

7 A. Yes, sir.

8 THE COURT: I'm ordering to you to accept the
9 assumption that Mr. Selby said in this record, 1741, that it
10 has been continuing since 1949.

11 A. Yes, sir.

12 THE COURT: You have to accept that assumption.

13 A. All right.

14 THE COURT: You may continue, Mr. Carr.

15 Q. (by Mr. Carr) Doctor, if that is true, then it is
16 a problem that did not clear with time, isn't that correct,
17 sir?

18 A. That's true, sir.

19 Q. Now, Doctor, I'd now like to ask you some questions
20 about Mr. Stover. That's Exhibit 1742. Would you give that
21 to the witness, please?

22 THE COURT: I'm sorry, I didn't catch that number.

23 MR. CARR: 1742, Your Honor.

24 THE COURT: Do either of you have a copy of 1742?

1 We can't locate it right now.

2 MR. CARR: Maybe I can help her, because it was in
3 the --

4 Q. Doctor, I'll also hand you what's been marked
5 Plaintiff's Exhibit 1775, which for the record are the
6 hospital records of Donald Stover dated October the 2nd,
7 1972, of the Herbert J. Thomas Memorial Hospital. And,
8 Doctor, there are two pages that I have tabbed there and I'd
9 offer 1775 into evidence, please the Court, and the two pages
10 that I have tabbed, I have copies for the Court and for
11 counsel.

12 MR. HEINEMAN: May counsel approach the bench,
13 please?

14 THE COURT: Sure.

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

17 THE COURT: This was a 1972 hospitalization?

18 MR. CARR: Yes, Your Honor.

19 MR. HEINEMAN: 1775 is the entire record?

20 THE COURT: Right. And these are two pages from
21 it.

22 MR. CARR: Let me get it from the witness. Let me
23 have that.

24 THE COURT: That's my understanding. That's the

1 entire record and these are just two pages from it.

2 MR. CARR: It's not from -- it's his entire record
3 of the Herbert J. Thomas Memorial Hospital, but this
4 particular record is from a 1956 hospital record.

5 THE COURT: Oh.

6 MR. CARR: The cover page says '72, but --

7 THE COURT: All records?

8 MR. CARR: Yes.

9 MR. CARR: So it really consists of -- exhibit
10 consists of two record, one is in October the 2nd, '72, and
11 the other is January the 15th, 1956.

12 MR. HEINEMAN: All right. Your Honor, we would
13 object to this record. First of all, it's hearsay.
14 Secondly, it's not been -- it has not been authenticated, not
15 been identified, and it's never been shown that this witness
16 has ever seen it before. Therefore, there has been no
17 foundation laid for its admission into evidence. And, we
18 would object to it on all those grounds. In addition, I
19 think I said hearsay, didn't I?

20 THE COURT: Yes, you did.

21 MR. CARR: These records, Your Honor, are records
22 that were given to us by Monsanto, who we asked for all of
23 the hospital records on these 36 people that they have. Dr.
24 O'Dell, whose signature appears at the bottom of the 1956

1 record, is a Monsanto Company doctor. These are the
2 microfilm numbers showing it comes from Monsanto's records.
3 These are records that this company has maintained, and this
4 particular one shows that Monsanto even is paying the bill on
5 these records, and it's certainly previously been established
6 that these are the kind of records that experts base opinions
7 on and use in their treatment and diagnosis and care of
8 patients.

9 MR. HEINEMAN: Your Honor, that does not overcome
10 my objection, and I'm not -- are you saying O'Dell was a
11 company physician?

12 MR. CARR: He was a physician hired by Monsanto to
13 treat these men.

14 MR. HEINEMAN: But he's not a company physician.

15 MR. CARR: He's not a full-time paid employee, but
16 he was a doctor that was used by them to examine and treat
17 these employees who were injured on the job, as you know.

18 MR. HEINEMAN: Well, I don't know that, so I can't
19 tell you.

20 THE COURT: Okay. Objection is overruled. I'll
21 admit it over objection.

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

23 Q. (by Mr. Carr) Now, Doctor, this Exhibit 1775
24 actually consists of two separate hospital record admissions,

1 does it not, sir, that is one dated October the 2nd, '72, and
2 another one dated January 15th, 1956, is that correct,
3 Doctor?

4 A. No, not completely. I have one record here dated
5 9-10-55, sir, that was one progress report -- record, and
6 another dated 1-19-56 and another dated 10-72.

7 Q. All right, so actually we have three?

8 A. I believe you do.

9 Q. Three reports that are part of the hospital
10 records?

11 A. Part of --

12 Q. One is dated September the 10th, '55, and one dated
13 January of 1956, and another one October of 1972, is that
14 correct, sir?

15 A. Yes, I assume these are parts of records, sir.

16 Q. This is the way it was given to me, Dr. Suskind, so
17 I assume it is all the records that Monsanto has, at least
18 it's supposed to be. And, Doctor, we then have three
19 separate --

20 MR. HEINEMAN: Your Honor, may counsel approach the
21 bench?

22 THE COURT: Sure.

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

1 MR. HEINEMAN: I object to that statement of Mr.
2 Carr which is to the effect that this is all the records
3 Monsanto has. Now he hasn't even purported to us on the
4 record that this is all the records that were provided to him
5 with respect to this man. That's just simply an untrue
6 statement.

7 MR. CARR: Let me amend that. It is misleading.
8 All the records that Monsanto has given me relating to these
9 particular hospitalizations. This is -- these records were
10 given to me as a direct request a couple weeks ago of
11 Monsanto to supply me the records that they have on these 36
12 men from 1953 down to the present time and these are part of
13 those records.

14 THE COURT: Fine. Okay.
15 (The following proceedings were had in open court.)

16 Q. (by Mr. Carr) Doctor, the statement that I should
17 have made to you that these are part of the records that
18 Monsanto has given me, but they are all of the records that
19 were given me pertaining to these particular
20 hospitalizations, all right?

21 A. Yes, sir.

22 Q. All right. Now, Doctor -- Your Honor, we would
23 pass part of this exhibit to the jury at this time.

24 THE COURT: Yes, you may.

1 (Exhibit passed to the jury)

2 MR. CARR: And for the record, Your Honor, the part
3 that is being passed to the jury are the pages that are
4 numbered 9541164 and 9541165, and I think I've given the
5 Court and counsel copies of those, have I not?

6 THE COURT: Yes.

7 Q. (by Mr. Carr) Doctor, this report that is dated
8 September the 10th, 1955, is it not, sir?

9 A. Yes, it is.

10 Q. And it's a report signed by Dr. Nestmann, is it
11 not, sir?

12 A. Signed by two physicians, Dr. Nestmann -- I believe
13 that Nestmann is one of them. There is another one, sir.

14 Q. Dr. O'Dell signed it off as on the chart, does he
15 not?

16 A. I believe so.

17 Q. But it is the fact report of Dr. R. H. Nestmann,
18 N-e-s-t-m-a-n-n, is it not?

19 A. I believe that's how it reads.

20 Q. This Dr. Nestmann is the Nestmann that was referred
21 to in the exhibit that we previously discussed dated June
22 1956, is it not, sir?

23 A. I can't remember the date, but that's the same
24 Nestmann, I believe.

1 Q. Yes, it was the Nestmann that-- where it was stated
2 that all of the men examined by Dr. Nestmann for the company
3 had psychoneurosis, do you recall that, sir?

4 A. No, sir.

5 Q. You don't recall that?

6 A. No, sir.

7 MR. CARR: Jerry, do you have that exhibit number?
8 Plaintiff's Exhibit 1754, if you could find it for the
9 witness.

10 Q. (by Mr. Carr) Doctor, if you turn to the second to
11 the last page of that exhibit, and I'll ask you whether or
12 not you find these three paragraphs on that page that's shown
13 on 1754 A, the last three paragraphs on that page, Doctor, if
14 you'll turn to that page.

15 A. Yes, sir.

16 MR. CARR: Offer 1754 A into evidence, please the
17 Court.

18 MR. HEINEMAN: Counsel approach the bench?

19 THE COURT: Sure.

20 (The following Side Bar conversation was had outside the
21 hearing of the jury.)

22 MR. HEINEMAN: Your Honor, I object to the exhibit
23 on the grounds that it's not a copy of the complete page,
24 it's only a copy of selected portions from the page and it

1 would lead one to believe or lead the jury to believe that
2 there are -- that it is the entire page when it is not and --

3 THE COURT: Didn't he say state that it was the
4 last three -- my notes indicate that he stated it was the
5 last three paragraphs on the page to the jury before it was
6 offered.

7 MR. CARR: And the jury has been given this exhibit
8 already, Counsel, they can compare for themselves.

9 MR. HEINEMAN: Has this exhibit been passed to the
10 jury?

11 THE COURT: I think it has.

12 MR. CARR: It has been.

13 MR. HEINEMAN: I didn't remember that, Your Honor.

14 MR. CARR: Yes, it has.

15 THE COURT: I think that would cure it. Any other
16 objections?

17 MR. HEINEMAN: That's the only objection I had to
18 it, Your Honor.

19 THE COURT: Okay. It's admitted with objection.

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

21 Q. (by Mr. Carr) Doctor, so the record is clear,
22 those are the last three paragraphs that appear on that page,
23 isn't it, sir?

24 A. Yes.

1 Q. That page -- by the way, the jury has been given
2 that entire exhibit heretofore. Doctor, the -- this exhibit
3 does state, does it not, sir, that we discussed the findings
4 of Dr. R. H. Nestmann concerning psychoneurosis in most of
5 the employees he has examined for us.

6 MR. HEINEMAN: Objection, Your Honor, it's
7 repetitious. We have been over this document with the
8 witness.

9 THE COURT: Objection is overruled.

10 Q. (by Mr. Carr) Isn't that correct, sir?

11 A. That's what this memorandum by a Mr. Weger reads,
12 sir, yes.

13 Q. And, so now you do agree that this is the same
14 Nestmann that -- is it the same Nestmann in the Stover
15 records that was referred to in this exhibit dated November
16 18th, 1955, is it not, sir?

17 A. I believe it is the same, Dr. Nestmann.

18 Q. And now, Doctor, with regard to that exhibit, if I
19 can find mine -- here it is. Dr. Nestmann reviewed Mr.
20 Stover's problems, did he not, sir, according to this record?

21 A. Um.

22 Q. Well, Doctor, let me help you.

23 A. He did a medical examination, sir, yes, sir.

24 Q. And Dr. Nestmann is an internist, is he not, doctor

1 of internal medicine?

2 A. I believe he was, yes.

3 Q. And, Doctor, he tested the reflexes of Donald
4 Stover, did he not, according to this record?

5 A. Yes.

6 Q. You found the knee jerks to be 2+, the ankle jerks
7 1+, biceps jerks 2+, triceps 2+ and abdominals 4+, isn't that
8 correct?

9 A. Uh-huh.

10 Q. And those mean what with regard to reflexes as far
11 as normalcy is concerned, sir?

12 A. They are quite within normal limits, sir.

13 Q. Doctor, 4+ is active, is it not?

14 A. Yes, that's an active reflex, but it's normal, sir.

15 Q. Excuse me, 3+ is what, sir, is normally active
16 reflex, isn't it?

17 A. So is 4+, sir.

18 Q. Excuse me, Doctor, 4+ is most active, is it not,
19 sir?

20 A. Could be regarded as most active.

21 Q. And 3+ is considered active, is it not, sir?

22 A. Yes, sir.

23 Q. And, 2+ is considered diminished, isn't it, sir?

24 A. No, sir.

1 Q. What is 2+?

2 A. 2+ is as normal in you or me --

3 Q. Excuse me. With regard to the activity of the

4 reflexes, 2+ is considered diminished, is it not?

5 A. No, it is not.

6 Q. What is it?

7 A. It is normal for some people.

8 Q. I didn't say normal, did I, sir? I wasn't saying

9 abnormal or normal.

10 A. Sir, it is not diminished.

11 Q. Well, is it as active as 3+?

12 A. No, sir, but it is not diminished.

13 Q. Excuse me, Doctor, if you don't mind, if you just

14 wait, is it as active as 4+?

15 A. No.

16 Q. 4+ is considered hyperactive, is it not, sir?

17 A. It might be, but not necessarily.

18 Q. And 3+ -- Doctor, these reflexes range from absent,

19 don't they, sir, up to 4+?

20 A. Correct.

21 Q. And absent would be zero, wouldn't it, sir?

22 A. Correct.

23 Q. And 1+ would be very diminished?

24 A. No, sir.

1 Q. What would it be?

2 A. It would be normal for some people.

3 Q. You are using the word normal, aren't you, sir?

4 I'm not -- I want you to describe it with, in terms of

5 activity, sir.

6 A. Okay, it is not diminished, sir.

7 Q. Well, is it, is 1+ as active as 2+, sir?

8 A. No.

9 Q. 1+ is less active than 2+?

10 A. It's less prominent than 2+, yes.

11 Q. And 2+ is less active. And, Doctor, if you don't

12 mind, the word, the key word here is active, is it not?

13 A. No, the key word is normal, sir.

14 Q. No, Doctor, with regard to the way the reflex

15 reacts, the normal is how you interpret what the 1+ or the 2+

16 or the 3+ or the 4+ means. Normal and abnormal is how it is

17 interpreted, correct, sir?

18 A. Correct.

19 Q. Now, I'm talking about not interpretation of

20 whether it is normal or abnormal. Are you with me, Dr.

21 Suskind?

22 A. I believe I am, sir.

23 Q. I'm now going on a scale of activity, sir, from 0

24 to 4.

1 A. Uh-huh.

2 Q. And from a 0 to 4, this -- these numbers grade the
3 activity of these reflexes on a scale of 0 to 4, isn't that
4 correct, sir?

5 A. Correct, sir.

6 Q. 1+ is the least active, next to absent, and 4+ is
7 the most active, is it not, sir?

8 A. No, sir.

9 Q. Well, what would be the most active on a scale of 0
10 to 4+?

11 A. It could be 3+, it could be 4+.

12 Q. No, no, Doctor, 4+ is more active than 3+, is it
13 not, sir?

14 A. Manifestations are greater, sir, yes.

15 Q. And 2+ is less active than 3+, isn't it, sir?

16 A. It's normal, sir, yes.

17 MR. CARR: Your Honor, would you direct the witness
18 to use the same words that I'm trying to use? He's already
19 agreed normal and abnormal is an interpretation and he knows
20 I'm asking about a grade of activity.

21 THE COURT: Doctor, we have -- please listen to the
22 terminology of the question and respond. I think that's part
23 of responding to the question.

24 Q. (by Mr. Carr) Doctor, 2+ is less active than 3+,

1 is it not, sir?

2 A. It is.

3 Q. And 1+ is less active than 2+?

4 A. Yes, sir.

5 Q. And 0 is no activity at all, isn't it, sir?

6 A. Absent, yes.

7 Q. And, Doctor, these scales then on, if 3+, if you
8 assume, Doctor, that 3+ is normal, will you do that for a
9 moment, sir?

10 MR. HEINEMAN: Objection, Your Honor. Counsel
11 approach the bench?

12 THE COURT: Sure.

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

15 MR. HEINEMAN: This witness has testified that 2+,
16 3+, and 4+ are normal, within normal limits. There is no
17 basis, therefore, to ask this witness to assume that 3+ is
18 normal. The witness agrees with that.

19 MR. CARR: We have evidence in the record that
20 there are three kinds -- basically three kind of reflexes.
21 We have absent; you have diminished reflex; you have a
22 normally active reflex; you have a hyperactive reflex, and
23 that's testimony from Dr. Blonsky and from others, I might
24 say. And I'm asking him based upon that past evidence to

1 assume these things on that basis of what a neurologist has
2 testified. Now, he can say on redirect if he wants to that
3 he considers these things normal for a given individual. I'm
4 not quarreling with that. That's what he's trying to say,
5 I'm not quarreling with that, but I want him to assume that
6 1+ means a diminished reflex, which according to Dr. Blonsky
7 is an abnormal reflex.

8 MR. HEINEMAN: My objection, Your Honor, is that he
9 is asking -- well, that is a different thing he asked him to
10 assume. He asked him to assume that 3+ was normal.

11 THE COURT: Right.

12 MR. HEINEMAN: And I'm saying that this witness has
13 testified that all four of them are normal. I object to his
14 being asked to assume that 3+ is normal.

15 THE COURT: Well, he has testified that all three
16 are normal, but that does not take away from the evidentiary
17 basis for making, asking the witness to take this assumption,
18 and on that basis the assumption is proper, properly given to
19 the witness. Under those circumstances, your objection is
20 overruled.

21 THE COURT: Could you repeat, Mr. Carr -- Could you
22 repeat the assumption you want him to take?

23 MR. CARR: Yes.

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

1 Q. (by Mr. Carr) Doctor, I'd like you to assume that
2 we have had evidence in this case from neurologists and from
3 others that a 1+ reaction is a diminished reflex, and you, of
4 course, agree that 1+ is a diminished reflex from 3+, is it
5 not, sir?

6 A. No, sir.

7 Q. Doctor, didn't you agree with me that 1+ is
8 diminished from 2+ or 3+ or 4+?

9 A. It's a lower activity, sir.

10 Q. Didn't you agree that it's diminished from those
11 other reflexes, sir?

12 A. As a doctor, I can't use the word diminished, sir,
13 and a neurologist wouldn't use the word diminished either,
14 sir.

15 Q. Well, Doctor, I assure you neurologists have used
16 the word diminished in this case, and they have used them in
17 a number of times, sir, and other doctors have used the words
18 diminished.

19 A. In this particular case, Mr. Stover?

20 Q. No. In this case.

21 A. Oh, I'm sorry. I'm sorry.

22 Q. Doctor, would you assume, then, sir, that 1+ reflex
23 can be considered a diminished reflex?

24 A. I will assume it if you ask me to, sir, yes.

1 Q. Would you assume, sir, that 2+ and 3+ on a scale of
2 4 could be considered normal?
3 A. If you ask me to assume it.
4 Q. 1+ is a diminished reflex and can be considered
5 abnormal?
6 A. Only if you ask me to assume it.
7 Q. I'm asking you to assume it.
8 A. Okay.
9 Q. And a 4+ can be considered hyperactive.
10 A. If you ask me to assume it.
11 Q. I'm asking you to assume that, sir.
12 A. Yes, sir.
13 Q. These reflexes that Mr. Stover has on the scale
14 that I've given you, sir, the 1+ could be considered
15 diminished, could it not, sir?
16 A. If I'm to assume it, yes, sir.
17 Q. And, in fact, on this particular scale, 1+ is just
18 right above absent, isn't it, sir?
19 A. No, sir.
20 Q. Oh, is it not?
21 A. No, sir.
22 Q. What is between absent and 1+?
23 A. It could be a +-, sir, a reflex which is verily
24 visible and the doctor observing it may not be sure that it

BARELY

1 is there.

2 Q. Doctor --

3 A. May I finish, sir?

4 Q. Sure.

5 A. That it is there or absent, so that there is --

6 there is another level.

7 Q. All right.

8 A. That a doctor would consider, sir.

9 Q. Sure, we will accept that, Doctor, because there is
10 that level and others have testified to the -- to that
11 particular level, and I'll stand corrected, sir. Doctor, 1+
12 then is right above that, isn't it, sir? It is noted, but it
13 is diminished or lesser or less active, correct, sir?

14 A. No, sir.

15 Q. Well, what is a 1+ reflex?

16 A. A 1+ is a --

17 Q. In terms of activity, Doctor.

18 A. A 1+ is a positive reaction which is noted, a
19 positive reaction which is noted and it isn't diminished from
20 anything. It doesn't have to be diminished from anything if
21 that's the way the individual reacts. For example, I can
22 have --

23 Q. Excuse me. I've asked you in terms of activity to
24 define the 1+. You haven't done that. Tell us, please, sir,

1 what the 1+ means in terms of activity.

2 MR. HEINEMAN: Objection, Your Honor, that's
3 exactly what Dr. Suskind was doing. I object to the question
4 as interrupting his answer.

5 THE COURT: Objection is overruled. You may answer
6 the question.

7 Q. Please, the question is what does 1+ means in terms
8 of activity?

9 A. It means a positive reaction which is less active
10 than a 2+ reaction.

11 Q. And it would be compared to a 2+ reaction, it would
12 be less than or diminished than a 2+ reaction, would it
13 isn't, sir?

14 A. It would be less than.

15 Q. And isn't less than, diminished, Dr. Suskind?

16 A. No, sir, not necessarily.

17 Q. Doctor, what does diminished mean?

18 A. Diminished.

19 Q. Excuse me. May I finish my question, please, sir?

20 A. Sorry.

21 Q. Doesn't diminished mean less than something else,
22 reduced from something else, a lesser amount than something
23 else, sir?

24 A. No, sir.

1 Q. Doesn't mean that, sir?

2 A. No.

3 Q. Well, if you can't agree that it means that,
4 Doctor, then the most I'm going to get from you on this
5 question, sir, is that he has a 2+ active knee biceps and
6 triceps jerks and has a 1+, which is less active than his
7 knee jerks and biceps and triceps, isn't that correct, sir?

8 A. In that scale, yes, sir.

9 THE COURT: Mr. Carr, is this a good point for a
10 short break?

11 MR. CARR: Yes, sir.

12 THE COURT: We will take a short recess at this
13 time and then resume testimony. I would remind you, this
14 would go for any other break that we take, you are not to
15 discuss this matter among yourselves, or with anyone in the
16 panel, outside the panel, and not yet form any opinions or
17 conclusions about the matters on trial. Court is in short
18 recess.

19 (Following a recess, these proceedings were had in open
20 court.)

21 Q. (by Mr. Carr) Doctor, this report by Mr. Nestmann
22 on the second page gives as diagnosis severe psychoneurosis,
23 does it not, sir?

24 A. Yes, sir.

1 Q. Doctor, there is another tab there on the exhibit
2 that I've given you, is there not, sir, tab number 2, and
3 that's page numbered 9541166. Do you see that, sir, at the
4 bottom of the page where I have the tab that's numbered 2,
5 it's 9541166?

6 A. Yes, I see it, sir.

7 MR. CARR: You Honor, we have these pages to pass
8 to the jury as well.

9 MR. HEINEMAN: Is this marked separately?

10 MR. CARR: No, it's part of Plaintiff's Exhibit
11 1775, counsel.

12 (Exhibit passed to the jury)

13 Q. And, Doctor, this page shows at the top of the page
14 that Mr. Stover is Dr. O'Dell's patient, does it not, sir?

15 A. Yes.

16 Q. And it also shows that as of January 28th, 1956, he
17 has fatigue, his legs hurt at night, ache, tired, dull ache,
18 no numbness or tingling in the feet and legs, some -- or how
19 do you make out that?

20 A. I would say that would be foot.

21 Q. No before foot?

22 A. Some.

23 Q. Some foot, calf, and then back of thigh, back of
24 thigh cramps at night, would that be correct, Doctor, that

1 last clause on that fifth, fifth line there, back of thigh
2 cramps at night?

3 A. That's what he complains of, sir, yes.

4 Q. And then down toward the bottom page it says lots
5 of headaches -- well, before that it says some change in
6 libido, does it not, sir? You see that, sir?

7 A. Yes.

8 Q. And then a little lower it says lots of headaches,
9 takes Anacin and some, I suppose, sinus trouble, is that
10 correct, Doctor, is that what it says?

11 A. If I read that the way you do, I believe that's
12 what it reads. Those are the complaints that he made, sir.

13 Q. Am I misreading it?

14 A. No, no, not at all.

15 Q. All right. Would you mark this? Doctor, I'll now
16 hand you what's been marked Plaintiff's Exhibit 1776, ask you
17 do you recognize that as the Mount Sinai medical report, the
18 cover page is signed by Dr. Selikoff and Moses?

19 A. This appears to be part or all of the record of
20 Donald Stover provided by the Mount Sinai Medical Center.

21 Q. Now, Doctor -- Your Honor I'll offer 1776 at this
22 time.

23 MR. HEINEMAN: Counsel approach the bench, Judge?

24 THE COURT: Sure.

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

3 MR. HEINEMAN: We object to this document, Your
4 Honor, on the basis that it's hearsay, that there has been no
5 authentication or identification of the record pursuant to
6 Illinois law, and therefore no foundation has been laid for
7 its admission into evidence.

8 MR. CARR: These are one of the medical records
9 supplied to us by Monsanto from their files in response to
10 the request that they give me medical records from their
11 company files relating to Donald Stover.

12 MR. HEINEMAN: Your Honor, as you know, Mr. Carr
13 has asserted in this court before, hospital records or a
14 medical record is not admissible in and of itself in Illinois
15 without the testimony of the person that made the entry in
16 the record, and therefore -- I mean that's why it's hearsay
17 and I object to it on that basis. I think Illinois law is
18 clear on that point.

19 MR. CARR: It is also clear in the Wilson case and
20 the prodigy of Wilson that you can use records ordinarily
21 used by medical experts in cross examination. They can use
22 these records to form an opinion in chief, even though they
23 may not be admissible at that time. And they can be used in
24 cross examination of the expert witness in order to cross

1 examine him on the conclusions that he's reached, and we have
2 been through this a number of times.

3 MR. HEINEMAN: That may be so, Your Honor, but that
4 doesn't make it an admissible document, doesn't establish a
5 foundation for its admission into evidence. Now, if Mr.
6 Carr's position is that this witness can testify with respect
7 to the contents of all medical records upon which he has
8 relied, then that's one thing, and I don't think Mr. Carr is
9 taking that position.

10 MR. CARR: No, my position is that these are
11 medical records. They are authentic by virtue of the fact
12 that you've given them to us, part of your records, and we
13 are using them in cross examination of this witness.

14 THE COURT: Okay. I think they are admissible.
15 Objection is overruled, and I'm going to remind you, we are
16 going to break at quarter to.

17 MR. HEINEMAN: All right.

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

19 MR. CARR: We have some excerpts of that 1776 to
20 pass to the jury.

21 THE COURT: Fine.

22 (Exhibit passed to the jury)

23 Q. Doctor, the first page of this exhibit has a
24 statement in the second paragraph, does it not, and a report

1 dated October 24th, 1979, that he has among other things
2 generalized muscle weakness and atrophy, upper and lower stem
3 trees with fasciculations, diminished coordination, finger to
4 nose test, is that correct, sir?

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

6 Q. Yes. And, Doctor, on page numbered 9573805, the
7 tab that has the number 4 on it, and the exhibit that you
8 have, sir, could you turn to that, sir?

9 A. I have it before me, sir.

10 Q. And it reports muscle cramps, first noted in 1949,
11 does it not, sir?

12 A. Yes.

13 Q. And that it's currently active, you see that?

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

16 Q. And, joint pain first noted in -- what is that,
17 right hip and ankle, joint pain right hip and ankle?

18 A. I would assume that's --

19 Q. And it was first noted in '53, is that correct,
20 sir?

21 A. Yes.

22 Q. And there is no notation whether it is or is not
23 currently active, is that correct?

24 A. I would assume that means negative.

1 Q. My question is, there is no notation neither "N" or
2 "Y" for currently active, isn't that correct?

3 A. That's correct, sir.

4 Q. And, Doctor, under the neurological it has fatigue,
5 first noted, can't make that out, I suppose it's '52, the
6 ones below it, or '52 and in that -- currently active in that
7 he noted it while working with 2,4,5-T, is that correct, sir?

8 A. Correct.

9 Q. And he has a condition started in '52 still active,
10 weakness, he has a condition of irritability, nervousness,
11 insomnia, and nightmares. The nightmares he has started in
12 '52, but there is no further response that it's currently
13 active, is that correct, sir?

14 A. That's correct, sir.

15 Q. But the insomnia, the nervousness, the irritability
16 and the weakness all started in '52 and they are yet
17 currently active, according to this questionnaire, is that
18 correct, sir?

19 A. According to this questionnaire, sir.

20 Q. And on the next page, bears number 9573806, the
21 neurological continued, has a personality change in which is
22 written in there, "never got back to my old self," is that
23 right, sir?

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

1 Q. First noted in '52 and is currently active, and it
2 started while working with 2,4,5-T, correct, sir?

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

4 Q. And it also reads that he has depression first
5 noted in '52 and currently active and started working with
6 2,4,5-T, correct, sir?

7 A. According to this record.

8 Q. Also in the endocrine metabolic section he has
9 listed as decrease in sexual desire, difficulty in erection,
10 difficulty in ejaculation, intolerance to colds, all of which
11 are started in -- first noted in 1952, which are currently
12 active and which started about working with 2,4,5-T, is that
13 correct, sir?

14 A. According to the check-off list on this record,
15 sir.

16 Q. Also over to the side of it is written 23 years in
17 '52, can't make out that word, likewise, never normal, or
18 words to that effect, like before, is that right, sir?

19 A. I don't know, sir.

20 Q. Well, you can read the words never normal like
21 before, you can read that, can't you, sir?

22 A. Yes, I can read that, sir.

23 Q. Doctor, on the next page, there is a reflexes and
24 it's listed there, one equals absent, two equals sluggish,

1 three is active, and four is very active, you see that, sir?

2 A. On what page is that, sir?

3 Q. On page numbered -- it's tabbed number 7, I'm
4 sorry, I didn't tell you. That's tab numbered 7, page number
5 9573852, are you on that page, sir?

6 A. I'm on that page, sir.

7 Q. Fine. And there is an interpretation there or a
8 schedule to show what these various numbers mean, isn't that
9 correct, sir.

10 Q. And as I said it to you just a moment ago?

11 A. Yes.

12 Q. And this man, according to the chart that we have,
13 has number 3's for the biceps, the brachio -- can't make
14 that, what is that diaxis, triceps, finger and patellar, are
15 all three, which according to the chart means active,
16 correct, sir?

17 A. Yes.

18 Q. And, the ankle is a one. What does that mean
19 according to this chart, sir?

20 A. According to this chart it means absent.

21 Q. Doctor, if you turn to tab -- well, I don't know
22 what the tab is right now, but the page number is 9573882. I
23 think it's probably close to the last sheet on the -- in the
24 exhibit that you have.

1 A. I see it, sir.

2 Q. And, that is a sheet having the current -- rather,
3 I'm sorry, says medical history. Asks the question, have you
4 ever had any of the following problems or symptoms, and he
5 checks off in the yes column for ear trouble, nose or throat
6 trouble, epidemiology, frequent colds, headaches, dizziness,
7 irritability, nervousness, trouble sleeping, cough, trouble
8 breathing sometimes, wheezing, chest pain, pain in calves of
9 legs, fatigue, tiredness, indigestion, abdominal pain,
10 constipation, muscle cramps, trouble with sex life, and a
11 note behind it since 1953, saw M.D., medicine helps some,
12 still a problem. And then finally skin problems, correct,
13 sir?

14 A. Those are the checks.

15 Q. And, Doctor, Mr. Stover, when you saw him in the
16 same year, that is 1979, after you were seen by the
17 Selikoff-Moses group, he had current history of a number of
18 similar problems, did he not, sir?

19 A. No, sir.

20 Q. I'm sorry?

21 A. I said no, sir.

22 Q. Would you turn to Page 17, sir?

23 A. Yes, sir.

24 Q. What current problems does he check off on Pages 17

1 and 18, Dr. Suskind?

2 A. He checks off sleeplessness since 1976, nightmares
3 without any date, muscle pain without any date, muscle
4 weakness in limbs 1951, depression '51, memory change,
5 fatigue.

6 Q. Doctor, would you read the entire statement
7 relative to the memory rather than just part of it?

8 A. He says he has it, or it was checked off for
9 current as well as past --

10 Q. Doctor, I'm asking the symptom that you read off,
11 the neurological symptom, you just said change in memory?

12 A. Memory, poor, or change in memory is the subject.

13 Q. And he has a check?

14 A. The question wording and it's checked off as
15 current, and past, and then nervousness is checked off.

16 Q. Doctor, you left out 1951, didn't you?

17 A. You want me to read that, too, sir? Okay. 1951,
18 nervousness, current.

19 Q. You skipped always tired, general fatigue?

20 A. I'm sorry. Fatigue, current, past, 1951,
21 nervousness, current, past, 1951. Sleepiness, current, past,
22 no date.

23 THE COURT: Okay. Mr. Carr, is this a good point?

24 MR. CARR: Yes, Your Honor.

1 Q. Sir?

2 A. Yes.

3 Q. But in the Nestmann scale that I gave you, 0 would

4 be equivalent to 1, wouldn't it, sir?

5 A. I assume so, yes.

6 Q. And 2 in the Moses-Selikoff is the one right above

7 absent, isn't it, sir?

8 A. In this.

9 Q. And what's --

10 A. In this scale. It's just below it, yes, sir.

11 Q. And what is the word they use to describe that?

12 A. It says sluggish, sir.

13 Q. All right. And, Doctor, the reflexes then from Mr.

14 Stover had these problems in '55 and in early '79, did they

15 not, sir?

16 A. No, sir.

17 Q. They did not?

18 A. No, sir.

19 Q. Are you assuming the records are true?

20 A. Yes, sir, but these are not problems, sir.

21 Q. Now, Doctor, isn't absent reflex a problem?

22 A. But he didn't have any absent reflexes in Dr.

23 Nestmann's --

24 Q. Would you look at Page 9573852 and tell me, please,

1 whether he had absent reflexes in the ankle?

2 A. I'm sorry, I thought you were saying Dr. Nestmann,
3 sir, which is what you were referring to.

4 Q. No, Doctor, I was referring to both of them.

5 A. Well, Dr. Nestmann doesn't find absent reflexes.

6 Q. Dr. Nestmann found sluggish reflexes?

7 A. I don't believe so.

8 Q. Well, what did he find?

9 A. He found 1+ ankle jerks, and to my --

10 Q. What kind of word -- what kind of descriptive word
11 would you use, sir, to describe that 1+ reflex?

12 A. It is a reflex which could be normal.

13 Q. Doctor, in grade of activity, how would you
14 describe it, sir?

15 A. It's there and it could be normal, sir.

16 Q. Grade of activity, Dr. Suskind? What grade of
17 activity would you ascribe to 1+ on the Nestmann scale?

18 A. I would assume that that is active.

19 Q. Doctor, 1+, 2+, 3+, 4+ are all active on the
20 Nestmann scale?

21 A. No, 4+ would be hyperactive. 0 would be absent.

22 Q. Yes, and what would 1+ mean?

23 A. 1+ would be present.

24 Q. And what would 2+ mean?

1 A. 2+ would be present as well.

2 Q. What would 3+ be?

3 A. Present as well. Normal.

4 Q. Doctor, what you are saying, he would use then,

5 what would be the difference between the knee jerks at 2+ on

6 the Nestmann report and the ankle jerks at 1+, your

7 definition is simply that they are present, is that right,

8 sir?

9 A. Right, and they could be normal.

10 Q. Doctor, I'm not talking about normal now, am I,

11 sir? He used the numbers to differentiate between the

12 reflexes, did he not, sir?

13 A. Yes.

14 Q. What is the differentiation then between the

15 activity of the 2+ knee jerks and the 1+ ankle jerks, sir?

16 A. No real significance, sir.

17 Q. Doctor, I didn't ask you that, did I, sir? I asked

18 you what is the difference in the grade of activity, sir?

19 A. One is a little stronger than the other.

20 Q. And which is the stronger, sir?

21 A. The 2+ could be stronger, sir.

22 Q. And the 2+, doesn't he mean to convey to you that

23 the 2+ is more active than the 1+?

24 A. It is -- that's so, sir.

1 Q. And he means to convey to you that the 3+ is more
2 active than the 2+, doesn't he, sir?

3 A. He does.

4 Q. So, it would follow that the 1+ is less active than
5 the 2+, would it not, sir?

6 A. The 1+ reaction is somewhat more active -- more --
7 somewhat less active.

8 Q. Yes. And the 2+ is somewhat less active than the
9 3+, isn't it?

10 A. Yes, it is.

11 Q. So we do have then a grading, do we not, sir?

12 A. Yes, sir.

13 Q. And just as the Moses-Selikoff has a grading, isn't
14 that correct, sir?

15 A. No, sir.

16 Q. Doctor, are you now saying that the Moses-Selikoff
17 does not have a grading?

18 A. No, I'm not. You say just as the Moses-Selikoff,
19 sir, and I don't think that one can equate what Dr. Nestmann
20 has as a grading system with what the Selikoff group was a
21 grading system, because I don't know what they do. I don't
22 know what their grades mean.

23 Q. Doctor, but you've been interpreting these grades
24 here for us all day, haven't you?

1 A. No, I've only been interpreting Dr. Nestmann's. I
2 can't interpret Dr. Selikoff's, because I don't know how they
3 did their examination.

4 Q. You know how Nestmann does his examination?

5 A. Well, he at least says the way he does it.

6 Q. Excuse me. Do you know how he does his
7 examination, sir?

8 A. He at least has --

9 Q. Doctor, do you know how he did his examination,
10 sir?

11 A. Well, I wasn't there, so I can't tell you.

12 Q. Is the answer to my question, you do not know how
13 he did his examination?

14 A. No, I would assume that he did it the way a
15 neurologist does.

16 Q. Doctor, is the answer to my question you do not
17 know how he did his examination?

18 A. I do not know exactly how he did his examination.

19 Q. Doctor, you don't know anything about how he did
20 his examination, do you, sir?

21 A. Yes, sir.

22 Q. Does it report here somewhere how he did his
23 examination, sir?

24 A. No, sir.

1 Q. Did you talk to him about it?
2 A. No, I never talked about it to Nestmann.
3 Q. Have you read anything other than this report which
4 you say you saw for the first time today, sir?
5 A. No, I haven't, sir.
6 Q. There is nothing here that tells you how he did it,
7 is there, sir?
8 A. Yes, there is.
9 Q. What is there here that tells you how he did it?
10 A. The fact he is a qualified neurol --
11 Q. Please answer my question.
12 A. Internist.
13 Q. Please answer my question. What is there here that
14 tells how he did it.
15 MR. HEINEMAN: Objection. I think the doctor was
16 trying to do that. Object to the interruption and that he
17 answer.
18 THE COURT: Overruled. Not responsive.
19 A. The manual for doing the examination is not here,
20 sir, no, but as an internist --
21 Q. Doctor, did you understand my question?
22 A. Yes, I do.
23 Q. What is there in this report that tells you how he
24 did his examination?

1 Q. Doctor, the same thing is true about the
2 Moses-Selikoff study, is it not, sir?

3 A. That's quite true.

4 Q. So as far as you are concerned you have no
5 knowledge as to how either of them did this examination,
6 isn't that correct?

7 A. From this report I did --

8 Q. Isn't that correct?

9 A. That's quite true.

10 Q. And, Doctor, do you have some information other
11 than this report as to how either of these did the
12 examination?

13 A. I'm not sure I understand the question, sir.

14 Q. You said from this report you can't tell how they
15 did the examination, that might rest in the jury's mind that
16 somehow or another you have some other information other than
17 these reports. Doctor, do you have any information other
18 than these reports as to how either Moses-Selikoff or
19 Nestmann did their neurological examinations?

20 A. No, I don't. This is the first time I've ever seen
21 this.

22 Q. Doctor, this is the total knowledge you have as to
23 how they did their examination, these reports, isn't that
24 correct?

1 A. This is the total knowledge of the result of the
2 examination, sir.

3 Q. Doctor, you have no knowledge as to how either of
4 them did their examination, do you, sir?

5 A. That's quite true.

6 Q. What knowledge do you have as to how Nestmann did
7 his examination?

8 A. I say I don't.

9 Q. What knowledge do you have as to how Moses-Selikoff
10 did their examination?

11 A. I don't have any description of it. All I have is
12 the findings which is what a doctor does, he doesn't --

13 Q. Do you understand my question? Now, you took us
14 down the path that Moses-Selikoff -- their way was no good,
15 the way they did that.

16 A. I don't -- I didn't say that, huh-uh.

17 Q. Oh, but you did.

18 A. I did not say that, sir.

19 Q. In point of fact you don't know how either group
20 did their examination?

21 A. That's true, but I never said that I disagree with
22 the way they are doing it. I said I didn't know how they did
23 it.

24 Q. And you don't know how Nestmann does his either?

1 A. Mr. Carr, if you look at the record, you'll see
2 that my statement is accurate.

3 Q. Dr. Suskind, you don't know how Nestmann does his
4 either, do you?

5 A. No, there is no record and there shouldn't be.

6 Q. My question is, you don't know how Nestmann does
7 his either, did you, sir?

8 A. There is no description of it.

9 Q. My question is you don't know how Nestmann does his
10 either, did you sir?

11 A. That's correct, sir.

12 Q. Then they are on the same footing as far as
13 knowledge as to how either of them did their examination?

14 A. No, sir, they are not.

15 Q. Doctor, what knowledge do you have about one that
16 you don't have about the other as to how they did the
17 examination?

18 A. I don't have knowledge about either, so I can't
19 compare them if I don't have knowledge.

20 Q. Then your knowledge is on the same footing for
21 both, isn't it, sir?

22 A. I'm not sure I understand that question, sir.

23 Q. You have no knowledge of either one, do you, sir?

24 A. I have no knowledge as to the method, no, I do not.

1 Q. Isn't that correct?

2 A. That's correct, sir.

3 Q. They are on equal footing then so far as the method
4 is concerned, aren't they?

5 A. I can't say about equal footing.

6 Q. As far as you know, they are on equal footing,
7 aren't they?

8 A. Equal footing with respect to what, sir?

9 MR. CARR: Your Honor, would you direct the witness
10 to quit playing with me and to answer that question.

11 MR. HEINEMAN: Objection.

12 THE COURT: Gentlemen, approach the bench, please
13 (The following Side Bar conversation was had outside the
14 hearing of the jury.)

15 MR. HEINEMAN: This is absolutely outrageous about
16 playing with him,. The witness has made it clear in response
17 to Mr. Carr's questioning that he doesn't know the method,
18 therefore, how can he say whether or not the methods are on
19 equal footing. He doesn't know which one side did and he
20 doesn't know which the other side did, so he obviously
21 doesn't know whether they are on equal footing. That's what
22 he's responding.

23 MR. CARR: My question says as far as your
24 knowledge is concerned as to the method they are on equal

1 footing. That's exactly what I've asked.

2 THE COURT: This guy has been playing games for
3 days. The comment is one hundred percent accurate. The
4 objection is overruled. I would suggest perhaps you can use
5 a term other than you are referring and that might get
6 something across.

7 MR. CARR: All right.

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

9 Q. (by Mr. Carr) Doctor, with the knowledge that you
10 have about the methods that these two separate groups used is
11 the same, that is none as to either method, isn't that
12 correct, sir?

13 A. I don't know specifically how either of these
14 groups did their examination because it's not described, sir.

15 Q. And is that a yes to my question, Dr. Suskind?

16 A. I think I've answered it, and the answer is yes. I
17 don't know about either.

18 Q. All right, Doctor. Then, Doctor, all you have here
19 are the results, isn't that right, sir?

20 A. Correct.

21 Q. And Dr. Moses describes the ankle reflexes as
22 sluggish, don't they, sir? Absent, I'm sorry, on the ankle
23 reflexes?

24 A. In the report it's recorded as the ankle, you say?

1 Q. Yes.

2 A. They are reported as 1.

3 Q. And would you answer my question now, please?

4 A. They reported -- what was the question, sir.

5 Q. Reported as absent, aren't they, sir? The ankle

6 reflexes?

7 A. That's how it's recorded in the report, sir.

8 Q. And Dr. Nestmann reports them as less active than a

9 2 or a 3+?

10 A. He reports them as 1+, sir.

11 Q. Could you answer my question, sir?

12 A. 1+ is less than 2 or 3, sir, yes.

13 Q. And that's what Dr. Nestmann's said?

14 A. Yes, that's what he said.

15 Q. You don't report that for Mr. Stover either less

16 active or absent, either one, do you, sir?

17 A. We only reported as we interpreted sir, yes.

18 Q. Could you answer my question, sir?

19 A. We didn't grade them in this. We didn't report the

20 grades, sir, no. I didn't record --

21 Q. We have no way of knowing from your answer whether

22 or not he had a 1+, 2+, or 3+ reflex at the ankle, isn't that

23 right, sir?

24 A. I can't tell you now, sir, what it was.

1 Q. Doctor -- Could you answer my question?

2 A. This was seven years ago.

3 Q. Could you answer my question, Dr. Suskind, please,
4 if it's not too much trouble?

5 A. It's no trouble at all, sir. Would you repeat the
6 question, please?

7 (Court Reporter read the previous question.)

8 A. From this report, since there is no grade, you have
9 no way of knowing, sir.

10 Q. And is there any other report that we have, that
11 shows the grading of Mr. Stover's reflexes in 1979 other than
12 the Moses-Selikoff report which says they are absent at the
13 ankle?

14 A. I don't believe so. I don't know of any, unless
15 you do.

16 Q. Now, Doctor, I'd like to --

17 THE COURT: Okay. Before you get into the next
18 subject, is this a good place for a short break?

19 MR. CARR: Yes.

20 THE COURT: We will take a short recess at this
21 time.

22 (Following a recess, these proceedings were had in open
23 court.)

24 Q. (by Mr. Carr) Dr. Suskind, what is a

1 fasciculation?

2 A. A fasciculation is a series of contractions of the
3 muscles which appears on the surface as shivering of the
4 muscles.

5 Q. That's if you look at the biceps, you would see
6 that muscle in a sense twitching, would you, sir?

7 A. It is -- can be defined as an abnormal twitching of
8 the muscles.

9 Q. And that, of course, would be an objective finding,
10 would it not, sir?

11 A. I think so. Although persons may complain --

12 Q. Doctor, I'm asking you whether or not if a doctor
13 sees a muscle twitching, fasciculations, that is an abnormal
14 finding, isn't it?

15 A. If the doctor observes it, yes.

16 Q. Now, Doctor, Mr. Stover had fasciculations in 1979,
17 did he not, as reported by the Moses-Selikoff doctors but not
18 reported by you? Direct your attention to exhibit 1776, Your
19 Honor, the very first page of that, the second paragraph.

20 A. What number?

21 Q. 1776, that's the Mount Sinai medical study report
22 that you have in front of you.

23 A. Yes, but what page?

24 Q. The very first page, sir, second paragraph?

1 A. Uh-huh.

2 Q. Have you got it, sir?

3 A. I have it.

4 Q. And it was found and reported by Dr. Moses and
5 Selikoff, was it not, sir?

6 A. It was, yes.

7 Q. But you did not find nor report any fasciculations,
8 did you, sir?

9 A. We didn't notice any. If it had been noticed we
10 would have reported it, sir.

11 Q. You did not find nor did you report any
12 fasciculations in Donald Stover, did you, sir?

13 A. That is true, sir.

14 Q. Doctor, Doctors Moses and Selikoff also report
15 generalized muscle weakness in Mr. Stover, do they not, sir?

16 A. Yes.

17 Q. They found Stover had it, but you did not find and
18 report any generalized muscle weakness upon your examination
19 of Mr. Stover and in this report you may just a few months
20 after they examined him, isn't that correct?

21 A. I believe we did, sir.

22 Q. Where did you find the generalized muscle weakness,
23 what page is it reported?

24 A. On Page 24, under the neuropsychiatric

1 examination. We record that in 1953-'54, the patient claimed
2 he was nervous and irritable and much weakness all over but
3 no history of pain.

4 Q. Doctor, that is what he reports, correct, sir?

5 A. That is what he reported to us.

6 Q. My question was directed, sir, to whether or not
7 you found and reported in him an abnormality called
8 generalized muscle weakness?

9 A. We didn't find any. We didn't report, at least,
10 and that would reflect our findings of any -- what we would
11 have regarded as increased muscle weakness.

12 Q. And Doctor, Doctors Moses and Selikoff found and
13 reported atrophy of the upper and lower extremities, did they
14 not, sir?

15 A. That's how the -- that's how the final report
16 reads, but I would like perhaps to see whether it appears in
17 the actual report itself.

18 Q. Doctor, you may see that when Mr. Heineman takes
19 you through it if you want to, but my question to you, sir,
20 the report they have made here is they found and reported
21 atrophy of the lower and upper extremities, did they not,
22 sir?

23 A. In the letter they did report that, sir.

24 Q. And, Doctor, if you would like to find it yourself,

1 look at the yellow tab there that I have number three on.

2 A. Number --

3 Q. The tab numbered 3 on that exhibit.

4 A. Well, the three is the report itself, the letter,
5 I'm talking about the complete examination in which it is --

6 Q. Look at the tab numbered 5 then, please.

7 MR. HEINEMAN: Is that on one of the pages we
8 have?

9 MR. CARR: No, it's not. It's on the exhibit.

10 A. Yes, sir, and I must call to your attention the
11 fact that it says inspection. That's not an examination.
12 That's just a looking at.

13 Q. Doctor, how do you examine ones atrophy of the arms
14 without looking at the arms and inspecting the arms?

15 A. One might take a tape measure, sir, and measure the
16 circumference of the biceps or circumference of the thighs
17 for a man, however, whatever size he was or whatever age he
18 was in order to really determine if there was by examination,
19 not just looking, by examination real atrophy.

20 Q. Doctor, all that the tape could tell you is the
21 size of the arm?

22 A. Right.

23 Q. And you can have a man that's big; you could have a
24 man that has a big arm or a small arm; you can have a small

1 arm without having atrophied muscles, can you not, sir?

2 A. That's quite true, sir.

3 Q. And you can have a big arm with atrophied muscles,
4 can't you, sir?

5 A. You can.

6 Q. You can tell whether or not they are atrophied by
7 the examination, by the inspection and not the measurement,
8 isn't that correct?

9 A. You tell by both, sir.

10 Q. Doctor, on the tab numbered 5, sir, they had their
11 examination there and they reported atrophy, did they not,
12 sir?

13 A. By inspection, sir, yes.

14 Q. And, Doctor, they found and reported, whether by
15 inspection or whatever, they reported they found it, did they
16 not, sir?

17 A. Yes, and that he is -- then it's a judgment, sir.

18 Q. Most certainly is, Doctor, I'm not quarrelling with
19 that. It is a judgment. You have to look at the arm and
20 make a decision is this arm atrophied or is it not atrophied,
21 correct?

22 A. Correct.

23 Q. And they looked at, found, and reported an atrophy,
24 upper and lower extremities, did they not, sir?

1 A. This is what they have reported by inspection, sir,
2 yes.

3 Q. And you did not find that nor report it, did you,
4 sir?

5 A. We didn't find it, sir. If it was found we would
6 have reported it.

7 Q. Doctor, is the answer to my question you neither
8 found nor reported it?

9 A. We did not find it, sir.

10 Q. Now, Doctor, Dr. Nestmann also found in 1955 that
11 this man had severe psychoneurosis, did he not, sir?

12 A. This was the diagnosis which appears in the exhibit
13 that you have given me, 1775, a progress report dated --

14 Q. I wonder, Doctor, if you wouldn't mind, if you
15 could answer my question.

16 A. Yes.

17 Q. Thank you, Doctor. And, Doctor, with regard to
18 that severe psychoneurosis, that is one of the men then that
19 would be covered by this exhibit that Mr. Stone and, well,
20 you were present, where you all read the paper concerning the
21 Nestmann evaluations, correct, sir?

22 A. I don't know, sir.

23 Q. Doctor, isn't that what this exhibit says?

24 A. Well --

1 Q. Do you know whether Stover was involved in that,
2 sir?

3 A. I have no idea.

4 Q. Doctor, this meeting that you had with Mr.
5 Nestmann, rather with Mr. Stone the attorney, was in November
6 of 1955, wasn't it, sir? If you could look at Exhibit 1754
7 that you have there, sir.

8 A. I don't believe I have it here, sir.

9 Q. You do have it, sir, the Clerk gave it to you this
10 morning.

11 A. Uh-huh.

12 Q. That's it. Dated November, isn't it, sir?

13 A. November 18th, right.

14 Q. And Dr. Nestmann's report is dated September 10th,
15 is it not, sir?

16 A. Yes.

17 Q. Now, Doctor, I'd like you to turn to Mr. Willard if
18 you might, sir. Could you give the witness Exhibit 1743,
19 Miss? Doctor, also hand you what's been marked Plaintiff's
20 Exhibit 1777, which is part of the record from the herbert J.
21 Thomas hospital on Paul Willard, the first page at least is
22 dated May the 8th, '75, the second page bears a day of August
23 11th, '67, and there is other pages in here dated in '75 as
24 well, and this is the pre-'79 medical information that we

1 have received from Monsanto relative to Paul Willard, and
2 would you look at that, please, sir, and confirm that it does
3 relate to Mr. Willard?

4 A. (no response)

5 Q. Have you confirmed that, Doctor?

6 A. I have before me the 1979 examination record of
7 Paul Wilard, and I have also before me Exhibit 1777, which
8 are some of the hospital records of Paul Willard, one in
9 1967, one a sheet from a discharge summary in May of 1975, a
10 summary record from a hospital in November 1975, with an EKG
11 and another which is illegible. I can't read that. It's --
12 I can't tell whether it's a hospital record or whatever it
13 might be, sir, dated July 21, 1975, but none of it is
14 actually legible.

15 MR. CARR: Your Honor, I'd like to offer
16 Plaintiff's Exhibit 1777 at this time.

17 MR. HEINEMAN: Counsel approach the bench, Your
18 Honor?

19 THE COURT: Sure.

20 (The following Side Bar conversation was had outside the
21 hearing of the jury.)

22 MR. HEINEMAN: Your Honor, I think I heard Mr. Carr
23 say that these are the pre-'79 medical records produced to
24 him by Monsanto on Mr. Willard.

1 MR. CARR: That's correct.

2 MR. HEINEMAN: Well, that's incorrect, because we
3 have already produced the plant medical card.

4 MR. CARR: The what?

5 MR. HEINEMAN: The plant medical records on Mr.
6 Willard have been produced to Mr. Carr.

7 MR. CARR: That was produced to Dr. Carnow. If you
8 want me to amend my statements that we will show it's clearly
9 not the plant records, I'll be glad to do so.

10 MR. CARR: No, I want to make sure on the record
11 that there are other records that you have been produced.

12 MR. CARR: Oh.

13 MR. HEINEMAN: The plant medical records relating
14 to Willard.

15 MR. CARR: Yes, produced to Dr. Carnow, and I'm
16 perfectly willing to amend my statement, Counsel.

17 MR. HEINEMAN: All right. The second thing is we
18 would object to the admission of these records on the grounds
19 that they were hearsay, the ones that he's looking at now.

20 THE COURT: '77?

21 MR. HEINEMAN: Apparently outside medical records,
22 by what the doctor has said. They have not been
23 authenticated. They have not been identified. They lack
24 foundation based upon any evidence in this case, and

1 therefore, I would object to them both on the basis of
2 hearsay and the lack of foundation for identification.

3 MR. CARR: This exhibit is what was produced to us
4 by Monsanto at my request that they produce all the medical
5 information that Monsanto has, all the medical records that
6 Monsanto has relating to Mr. Willard in between the years
7 1953 and up to the present time. This part of those records
8 is that -- are those record which were dated after 1953 and
9 before 1979. That's what this record consists of. They are
10 the same kind of records that we have discussed earlier that
11 doctors customarily and ordinarily rely upon.

12 MR. HEINEMAN: But I want the record to be clear,
13 Your Honor, that Mr. Carr has already had produced to him and
14 they were not reproduced recently, plant medical records.

15 THE COURT: I think that's been cleared -- that was
16 clarified earlier.

17 MR. HEINEMAN: Okay, that's in that constructive
18 production that we talked about before.

19 THE COURT: Right. That he got in the Federal
20 Court.

21 MR. HEINEMAN: Right. They may cover this same
22 time period.

23 THE COURT: I understand what you are saying.
24 Okay, I think on the other we have gone through this before.

1 Your objection is overruled. I understand you will amend
2 your statement as far as what these are.

3 MR. HEINEMAN: And may my objection be continuing
4 to the testimony regarding this?

5 THE COURT: Sure.

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

7 Q. (by Mr. Carr) so that the record is clear, 1777
8 does not include any plant medical records as such, these are
9 all outside medical records, aren't they, sir? Outside of
10 the plant medical records?

11 A. Yes, I believe they are. They all look like
12 hospital records, sir.

13 Q. All right. Doctor, the plant medical records were
14 furnished -- well, you don't know the circumstances of the
15 furnishing of the plant medical records, do you, sir?

16 A. (witness shrugs shoulders.)

17 MR. CARR: All right. Your Honor, I'd like to pass
18 the first sheet of Exhibit 1777 to the jury if I might.

19 THE COURT: Yes, you may.

20 (Exhibit passed to the jury)

21 Q. Doctor, the first sheet of that exhibit is a
22 discharge summary from that Herbert J. Thomas Memorial
23 Hospital, South Charleston, West Virginia, is it not, sir?

24 A. Yes, it is.

1 Q. And it's dated -- well, it's admitted on the 8th of
2 May, '75 and discharged on the 4th of June, '75 and this is a
3 discharge summary, is it not, sir?

4 A. That's what it appears to be, sir.

5 Q. Doctor, it shows his complaints to be that he has
6 marked shortness of breath, tightness or squeezing of his
7 chest, correct, sir, among others?

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

9 Q. And he also complained of being restless with
10 insomnia, swelling of the feet, palpitations of the heart,
11 cardiac arrhythmia, correct, sir?

12 A. That's what he complained about, sir.

13 Q. Also stated according to this record that he had
14 rectal drainage at times, especially after much exertion, is
15 that correct, sir?

16 A. This is the -- among the series of the complaints
17 recorded.

18 Q. He also said he had not worked for several years
19 due to so-called poisoning or irritation from the chemicals
20 which he stated that he had obtained from the Monsanto
21 Chemical Company, is that correct, sir?

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

23 Q. And also describes, at least according to this
24 record, that he also has low back pain and spells of

1 insomnia, is that correct, sir?

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

3 Q. Now, Doctor, this gentleman then, at least
4 according to this record, if what he was -- if he stated
5 there is true, did not have problems that clear up with time,
6 his problems did not clear up with time, did they, sir, if
7 this record is true?

8 A. Yes, sir.

9 Q. Doctor, are you assuming that the man is telling
10 the truth and that these are factual statements that he's
11 making in this, that he's reported to have made in this
12 discharge summary?

13 A. I am not assuming he's telling the truth.

14 Q. Are you assuming that he's lying?

15 A. He believed that he was having these things but in
16 fact, from our records in '53 and '79, there was some great
17 doubt in our minds as to whether he had these, these were
18 real.

19 Q. Doctor, we are going to get to your records which
20 were in '79.

21 A. '53.

22 Q. In a moment, but my question to you at this point
23 in time, sir, if he were telling the truth, according to this
24 report, his problems had not cleared up with passage of time,

1 had they, sir?

2 A. Yes, sir.

3 Q. Sir?

4 A. Yes, sir.

5 Q. Yes, sir what, they had cleared, they not cleared
6 up?

7 A. They had. They had cleared up, and it's uncertain
8 as to whether or not he had these problems.

9 Q. Doctor, are you assuming that the man is telling
10 the truth in '75 to these doctors in this hospital?

11 A. Are you asking me to assume that, sir?

12 Q. Doctor, I did. I prefaced it with if he is telling
13 the truth. You recall I said that, sir?

14 A. Yes, I do.

15 Q. If he is telling the truth, Dr. Suskind, his
16 problems did not clear up, did they, sir?

17 A. If I'm assuming he's telling the truth, he still
18 has heart problems, or he still has these problems.

19 Q. That are mentioned here?

20 A. Some of them, yes.

21 Q. Doctor, if he is telling the truth, he still has
22 the problems mentioned here, hasn't he, sir?

23 A. Well, there are a number of problems he didn't have
24 before, sir, like rectal drainage.

1 Q. Yes.

2 A. Okay. And, edema of the feet.

3 Q. Yes.

4 A. So that there are other things, -- there are a
5 whole series of complaints here, sir.

6 Q. Yes, that --

7 A. And I cannot assume that he had them before because
8 he did not.

9 Q. Well, Doctor, whenever they started, and why ever
10 they started, whether they were caused by the poisoning, by
11 the chemical, or whatever, this man had these problems at
12 this point in time, if he was telling the truth, isn't that
13 correct, sir?

14 A. If he was telling the truth he had those problems
15 as of 1975, sir.

16 Q. All right. Now, Doctor, this second tab there,
17 sir, is a report dated August 11th, 1967, is it not, sir, on
18 that Exhibit 1777.

19 MR. HEINEMAN: I'm sorry, I didn't hear.

20 A. Yes, it is, it's a letter.

21 MR. CARR: Your Honor, I would like to pass this
22 exhibit to the jury, this part of this exhibit to the jury.

23 THE COURT: All right.

24 (Exhibit passed to the jury)

1 Q. Doctor, this exhibit shows that the man had
2 Peyronie's Disease in '67, does it not, sir?

3 A. Yes, it does.

4 Q. And if this were a problem that was started by the
5 explosion in question, it too would be a problem that had not
6 cleared up with the passage of time, isn't that correct?

7 A. No, sir. No, sir.

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

10 THE COURT: Yes, you may.

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

13 MR. HEINEMAN: I don't believe there is a factual
14 basis for Mr. Carr to premise this question with if this were
15 something that started with the explosion. I object to it.
16 There is no factual basis for it. I don't know if he's
17 asking him to assume it or if it's a hypothetical question,
18 but it's not based on any evidence that I hear.

19 MR. CARR: Not yet, but it will be, Your Honor.

20 THE COURT: Are you asking him a hypothetical --

21 MR. CARR: I'm asking him hypothetically if this --
22 I want to know what the witness' response is.

23 MR. HEINEMAN: You can't do that.

24 MR. CARR: When I relate to the Court I can tie it

1 up, I can. I'm relating to the Court that I can tie up this
2 question.

3 THE COURT: I'll reserve ruling to see if it gets
4 tied up.

5 MR. CARR: I might say, it is already in the
6 record, but I'm going -- the evidence is already in the
7 record that supports that question, but I'll make it clear
8 for Mr. Heineman in a moment.

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

10 Q. (by Mr. Carr) Now, could you answer that question,
11 please, sir?

12 A. My answer is no, sir.

13 Q. Doctor, are you assuming that he's got the
14 Peyronie's Disease?

15 A. He has Peyronie's Disease according to this record,
16 sir, and he did -- yes.

17 Q. And, if he had that problem, if he -- if this
18 problem were -- was related to the explosion, it's a problem
19 then that didn't clear up, wouldn't that be correct, sir?

20 MR. HEINEMAN: Your Honor, may my objection apply
21 to that statement as well?

22 THE COURT: Sure.

23 Q. Would that be correct, Doctor?

24 A. That's not correct, sir.

1 Q. Doctor, are you assuming that, that it is
2 Peyronie's Disease that's related to the exposure as I asked
3 you?

4 A. You didn't ask me to, and I can't assume it because
5 it's not -- it's not related to the explosion, sir.

6 Q. Didn't you hear me use the word if?

7 A. But it's a false assumption.

8 Q. You know that Mr. Willard believes it was caused by
9 the explosion?

10 A. No, I do not.

11 Q. You don't know that?

12 A. No, I do not.

13 Q. Doctor, I'll remind you you are under oath. Are
14 you telling us that you do not know and did not know that Mr.
15 Willard believed that his Peyronie's problem was related to
16 the explosion? Are you telling us that, sir?

17 A. I am.

18 Q. Doctor, look at the report that you made in 1979,
19 Page 8.

20 A. Okay.

21 Q. And does it not say in your report in 1979,
22 "Believed he has had Peyronie's Disease related to explosion,
23 1965 onset, treated with x-ray therapy." Doesn't it say
24 that, sir?

1 A. It says so.

2 Q. In your report?

3 A. It says so, but I don't believe it, sir.

4 Q. Doctor, that isn't what I asked you whether or not
5 you believe it was true. What I asked you was whether or not
6 Mr. Willard believed it was true.

7 A. According to the interviewer, yes.

8 Q. So you were mistaken when you told us about that he
9 did not believe it to be so?

10 A. No, I'm not mistaken.

11 Q. Doctor, didn't you just tell the jury that Mr. --
12 that you did not know that Mr. Willard believed his
13 Peyronie's Disease was caused or related to the explosion?
14 Didn't you tell us that, sir?

15 A. I did.

16 Q. And that wasn't true, was it, sir, because in your
17 own report it is pointed out that Mr. Willard believed he's
18 had Peyronie's Disease related to the explosion, isn't that
19 correct?

20 A. According to this record which I don't believe,
21 sir.

22 Q. Doctor, I wasn't asking you whether or not you
23 believe it. The question I asked you was whether or not Mr.
24 Willard believed it, wasn't it, sir?

1 A. My answer is no, sir, he did not.

2 Q. Doctor, would you read into the record what it
3 says?

4 A. It says believed --

5 Q. On Page 8, sir.

6 A. According to this interviewer, "believed he has had
7 Peyronie's Disease related to the explosion, 1965 onset."
8 1965. "Explosion --

9 Q. Doctor, doesn't say '65 in there twice, says it one
10 time. You are reading it twice. I wanted you to read into
11 the record what it says here, sir, about his record.

12 A. "1965 onset. Treated with x-ray therapy."

13 Q. And what does it say as far as his belief, sir?

14 A. I have already read that, sir.

15 Q. Then he does believe and stated in '79 that he
16 believed it was related to the explosion, did he not, sir?

17 A. According to this interviewer, sir.

18 Q. Isn't this interviewer recording what the man says,
19 sir?

20 A. I would assume so.

21 Q. Doctor, it was also found that he had Peyronie's
22 Disease upon examination, wasn't it, sir?

23 A. No, sir.

24 Q. Doctor, would you turn to Page 23, please?

1 A. I will, sir, and I have it right here, sir.

2 Q. And it says, does it not, sir, at the top of the
3 page, "Peyronie's Disease for fifteen years," say that, sir?

4 A. Yes.

5 Q. And then at the bottom --

6 A. And it says able to function, okay. Able to
7 function okay, desire okay, in that same sentence, sir.

8 Q. Yes, Doctor, but didn't you find on examination
9 that he had a purplish streak of the penis secondary to x-ray
10 treatment?

11 A. That is the result of the x-ray treatment not that
12 he had Peyronie's Disease currently because he was able to
13 function adequately. If he had Peyronie's Disease in 1979,
14 he wouldn't have been able to function adequately, and the
15 proof of it is in this page, sir.

16 Q. My question was you found on your examination that
17 he had Peyronie's Disease?

18 A. We found that he had had Peyronie's Disease.

19 Q. And you did find that he had had it?

20 A. He had had it, yes, sir, but he didn't have it on
21 examination.

22 Q. Well, he found -- you found the residual of the
23 Peyronie's disease?

24 A. No, we found x-ray -- we found the result of the

1 x-ray treatment, which are the purplish streaks on the skin,
2 and that's what it says. Says, "Purplish streaks on the
3 dorsum of the penis secondary to x-ray treatment, otherwise
4 normal." That's the examination, sir.

5 Q. Fine, Doctor, and it shows the residual of this
6 Peyronie's Disease?

7 A. No, sir, it does not. Shows residual of treatment.

8 Q. X-ray is residual of Peyronie's Disease?

9 A. Shows the residual of treatment.

10 Q. All right. Doctor, I'll amend the question, shows
11 the residual of the treatment for the Peyronie's treatment,
12 doesn't it, sir?

13 A. Yes, sir.

14 Q. Doctor, Mr. Willard was also seen by the Mount
15 Sinai group, was he not, sir?

16 A. I don't know, sir.

17 Q. Doctor, I hand you what's been marked Plaintiff's
18 Exhibit 1778 and ask you if that is not the from the Mount
19 Sinai group doctors Selikoff and Moses of their April 1979
20 examination?

21 A. I believe this to be the -- some of the record of
22 the Mount Sinai Medical Center examination of Mr. Paul
23 Willard. The report dated October 24, 1979.

24 MR. CARR: Your Honor, I'll offer this exhibit 1778

1 at this time.

2 MR. HEINEMAN: Counsel approach the bench, please?

3 THE COURT: Sure.

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

6 MR. HEINEMAN: Your Honor, I object to the
7 admission of this document, of this exhibit, on the grounds
8 that it's hearsay, that there has been no foundation laid.
9 It's not been authenticated, not been identified. The author
10 of the contents has not been present in court to testify
11 about them. And, the only thing that's been elicited, this
12 witness has been shown it, never been elicited that he's ever
13 seen it before. He can't identify it from any prior
14 experience. All it says -- he says it appears to be a record
15 from Mount Sinai about Paul Willard. That's absolutely no
16 foundation for the admission of the clearly hearsay document
17 and I object to it.

18 MR. CARR: As the other exhibits were, Your Honor,
19 this is a document that's been given to us by Monsanto, shows
20 their identification number on it as part of their medical
21 records relating to Paul Willard.

22 MR. HEINEMAN: Not part of our medical records, we
23 have plant medical records. These are part of records --

24 MR. CARR: Part of your plant --

1 MR. HEINEMAN: No, they are not. Part of records
2 that happen to be in our possession. They are not plant
3 medical records, not generated by us. This is a document
4 generated apparently by the Mount Sinai Medical Center. We
5 can't lend any authenticity to this document because we
6 didn't create it, and the same is true with all the other
7 outside medical records he's brought in here with this
8 witness.

9 THE COURT: It's admitted over objection.
10 (The following proceedings were had in open court.)

11 MR. CARR: Your Honor, there have been excerpts
12 from that record which we have given to Court and to counsel
13 which we'd like to pass to the jury.

14 THE COURT: Fine.
15 (Exhibit passed to the jury)

16 Q. (by Mr. Carr) Doctor, the first page of this
17 exhibit has a paragraph in it showing what the physical
18 examination revealed by the Moses-Selikoff group in April of
19 '79, does it not, sir?

20 A. Right.

21 Q. Sir?

22 A. Yes, sir.

23 Q. And it shows, among other things, he had deep
24 tendon reflexes which were decreased bilaterally, upper and

1 lower extremities, does it not, sir?

2 A. That's what the letter reads, sir.

3 Q. And we have previously seen the scale that they
4 used for reflexes, have we not, Doctor?

5 A. I believe you've pointed that out to me, sir.

6 Q. And, Doctor, in addition to this -- these problems,
7 he also had a long list of problems shown in the fourth, the
8 tab numbered 4, the second -- the page numbered 9574481,
9 isn't that correct, sir?

10 A. May I ask a question? What problems are you
11 referring to to begin with? The list of problems?

12 Q. The problems that are listed on the page, the
13 problems, Dr. Suskind, that I gave you that appear on
14 9574481.

15 A. That's the first time you've referred to them,
16 sir. I haven't seen this before.

17 Q. My question, there are a long list of problems that
18 the man had, isn't that right, sir?

19 A. If you are referring to this, which I see for the
20 first time, I'd like to look at it, sir. Yes, this is a
21 check list, have you ever had any of the following symptoms,
22 yes.

23 Q. Doctor, if you don't mind just answering my
24 question, please, sir.

1 A. There are 32 problems here, sir, are there?

2 Q. Doctor, my question -- I'll get to the next
3 question in a moment. He relates eye trouble, it started in
4 the year 1950 and that he still has it, does he not, sir?

5 A. That's --

6 MR. HEINEMAN: Excuse me, is that '50?

7 MR. CARR: Yes, '50.

8 A. I can't really read that.

9 Q. Sir?

10 A. It is either '50 or '56, I can't read it.

11 Q. Well, if you look at the bottom of the page you'll
12 see his skin problems started in the year '50 also?

13 A. Well, the skin problems started in year '50, but
14 I'm not sure about the eye problems. That could be either
15 '50 or '56, I don't know, sir.

16 Q. Doctor, would you reasonably interpret that to be
17 '50?

18 A. It could be.

19 Q. And he reports that he still has it, does he not,
20 sir?

21 A. I believe he says yes.

22 Q. And as far as the ear trouble, he still has that
23 and apparently started in '51?

24 A. I don't know what the ear trouble is, sir, and I

1 can't accept this as being ear trouble.

2 Q. I'm not asking you whether you know what it is, I'm
3 simply asking you to report for our records, what this record
4 says, sir? That he checks ear trouble.

5 A. The interviewer checked it.

6 Q. That started in the year '51, doesn't it, sir?

7 A. I can't read the '51, sir.

8 Q. You see the 5, don't you, sir?

9 A. Yes.

10 Q. You don't see the 1?

11 A. No, I do not, sir.

12 Q. Let me point out to you --

13 A. It could be 9, could be 7, could be any one of
14 those things.

15 Q. Doctor, do you see that 5 there?

16 A. Yes.

17 Q. Do you see that slash? See anything, anything at
18 the top of it that would make it look like it's a 9?

19 A. From this record, I cannot tell.

20 Q. Do you see anything at the top that makes it look
21 like it could be a 9?

22 A. Could be, sir.

23 Q. You think so?

24 A. Yes, sir.

1 Q. Doctor, we pass to the next one then. You've got
2 frequent --
3 A. Does he still have it?
4 Q. Got frequent colds and sore throat. You see that,
5 sir? Got a check for that, sir?
6 A. Uh-huh, see that.
7 Q. Started approximately year '53?
8 A. I see that.
9 Q. And he has it not so often now, sir?
10 A. It says not as often, I believe.
11 Q. Looks to me like so but doesn't mean anything,
12 about the same difference to me they mean, not so often or
13 not as often, either one?
14 A. Okay.
15 Q. Next one is headaches?
16 A. I see that, sir, it's checked off.
17 Q. And in the year started is not clear to me, is it
18 to you, sir?
19 A. No, but it says not often now.
20 Q. And the next one is dizziness. Can't make out when
21 that started, can you, sir? Many years ago, I guess?
22 A. Uh-huh.
23 Q. And, have them often, he has dizziness often, sir?
24 A. That may be what it says, sir.

1 Q. And has currently irritability, sir?

2 A. That's checked off but I can't read the comment.

3 Q. The irritability, doesn't say here when it started,
4 but on Page 9574400 it does say when it started, doesn't it,
5 sir, when he first noted it?

6 A. I don't know. I haven't read 9400, this is the
7 first page we have come to, sir. Where is 9400 and what's
8 the tab on it?

9 Q. Turn to the tab you have with the number 5 on it,
10 Doctor.

11 A. Thank you.

12 Q. Has irritability there, sir, first noted in '49
13 while working with 2,4,5-T, correct, sir?

14 A. That's on -- that's tab number 4, sir, or 5, which
15 are you talking about?

16 Q. I'm sorry, I didn't understand what you asked me?

17 A. Which tab are you talking about 4 or 5?

18 Q. Tab numbered 5.

19 A. And what's the subject?

20 Q. Shows the irritability started first noted in '49,
21 doesn't it, sir?

22 A. Irritability is on my 4400 and it's on tab 4, and I
23 have it irritability '49, yes.

24 Q. And, Doctor, he has nervousness, correct, sir?

1 A. The irritability -- can we go back there? He
2 doesn't have it now, though, sir.

3 Q. Doctor, if you would look at the question, do you
4 still have it, he says, yes, doesn't he, sir?

5 A. For irritability?

6 Q. Yes.

7 A. No, it's --

8 Q. Doctor, look at the medical history form that we
9 are going off on the checking says number 95734481, look at
10 that, sir.

11 A. Yes, sir, but it doesn't conform with this one,
12 sir.

13 Q. Doctor, if you would bear with me, sir, what you
14 are talking about this one, there is nothing in that square
15 for yes or no, is there, sir?

16 A. Yes, there is, sir. It says while working with
17 2,4,5-T and that's marked yes.

18 Q. That's in the column for while working with
19 2,4,5-T?

20 A. Right.

21 Q. On the currently active column are you looking at
22 that?

23 A. They are not filled.

24 Q. Doctor, are you looking at the currently --

1 A. I am, sir.

2 Q. And none of those squares are checked in whether
3 it's yes or no, correct, sir?

4 A. They are not filled in.

5 Q. They are not checked off either yes or no, are
6 they, sir?

7 A. That's correct.

8 Q. Now, Doctor, turn back to the Page 9574481 and look
9 at the question numbered 7, irritability?

10 A. Okay.

11 Q. Says there, does it not, sir, that he still has it?

12 A. Yes, and that would be inconsistent with the other
13 one, sir.

14 Q. Doctor, who is it that filled it out, the
15 interviewer or the man?

16 A. I have no idea, sir.

17 Q. And Doctor, it is not inconsistent -- you do have
18 an idea -- it's not inconsistent, is it, Doctor, where there
19 is no answer yes or no in the currently active column?

20 A. Yes --

21 Q. For either of those?

22 A. To me it would be inconsistent, and they are two
23 different handwritings, sir, one on the 4400 and the second
24 one on 4481, they are two completely different handwritings.

1 Q. Doctor, whether they are are two completely
2 different or five completely different, says, history here of
3 this man on his medical history Page 3, numbered 9574481,
4 that he has that currently, the problem of irritability,
5 isn't that correct, sir?

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

7 Q. And, Doctor, the next one says nervousness, that he
8 currently has nervousness, isn't that right, sir?

9 A. Correct.

10 Q. And, the page with your tab 4 on it shows that that
11 nervousness started in '49, first noted in '49, isn't that
12 correct, sir?

13 A. That's what this indicates, sir.

14 Q. And, the next one is trouble sleeping because of
15 his nerves and he currently has it, correct, sir?

16 A. You are talking about the insomnia?

17 A. No, where it says numbered 10 on the --

18 Q. Which page are you now referring to, sir?
19 95774481?

20 A. Okay, I have it.

21 Q. Trouble sleeping?

22 A. Okay.

23 Q. And he currently has it, does he not, sir?
24 According to this report?

1 A. According to whoever did this report, yes.

2 Q. And, on Page 9574400, that insomnia started, first
3 noted in 1949, wasn't it, sir?

4 A. Yes, and the current activity is not filled out.

5 MR. CARR: Your Honor, the witness is making it
6 extremely difficult for me to ask questions, because he
7 consistently puts in answers that the question doesn't call
8 for. I'd appreciate it if he would be instructed to listen
9 to my question and answer my question.

10 THE COURT: Doctor, you have been adding things
11 that are not asked for in the question. You've been doing
12 that for awhile. Please listen to the question carefully,
13 restrict your answer to the question only.

14 Q. (by Mr. Carr) Doctor, you understand the jury has
15 this page in front of them. They are looking at it at the
16 same time we look at it. They know that it's not filled
17 out. They can see. They can read. They are aware of the
18 fact that it's not filled out. You don't need to tell them,
19 sir. Now, Doctor, the next problem is sleepy all the time,
20 can sleep while sitting up most of the time, and he still has
21 that problem, correct, sir? That is a current problem, is
22 that correct, sir?

23 A. You asked whether he still had it. He has it at
24 this time, sir, yes. Whether he had it in the past, I can't

1 tell you.

2 Q. Doctor, the next problem is depression, and he
3 still has depression, has he not, sir?

4 A. No, sir, he has depression, but whether he still
5 has it, I don't know.

6 Q. Doctor, you know that he had it in 1953, don't you,
7 sir? We know that when you saw him in '79 he had a current
8 case of it and he dated it from 1949, you know that, too,
9 don't you, sir?

10 A. If you are talking about depression in '53, I don't
11 believe I can find any reference to depression, sir.

12 Q. If you would look on Page 11 of Exhibit 1701,
13 Doctor --

14 A. Yeah.

15 Q. In the third paragraph that's on that page. "He
16 does complain of presternal aching, marked dyspnea on
17 exertion, frequent heart palpitation, flushing, low back
18 pain, posterior cervical pain, recurrent vertigo, sandy
19 feeling in the eyes, and depression?"

20 A. Yes, sir.

21 Q. So he had it in '53, did he not, sir?

22 A. He had it in '53.

23 Q. And he reported in this report to Dr. Moses and
24 Selikoff that he still had it?

1 A. He has it in 1979, sir, yes.

2 Q. And he reported to you in your examination of him,
3 that he was currently depressed, that he had it in the past
4 and that it started in 1949, isn't that right, sir?

5 A. On Page 18 of Exhibit 1743?

6 A. Yes, sir.

7 Q. Doctor, he also has complaints of numbness and
8 tingling in his feet and fingers currently, current problem,
9 is that correct, sir?

10 A. That's how this reads.

11 Q. And he reports on the tab that I've got, at least
12 tab number 6, I may have mistaken yours 9574401, that he had
13 numbness in 1951, isn't that correct, sir?

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

15 Q. And, Doctor, he talks about trouble breathing with
16 chest tightening a current problem, correct, sir?

17 A. In which record, sir?

18 Q. In the Mount Sinai, Moses-Selikoff record, sir, on
19 Page 9574481?

20 A. It is recorded, sir.

21 Q. Sir?

22 A. It is recorded that way.

23 Q. Doctor, he also complains about chest pain on
24 occasion, doesn't he, sir?

1 A. That's the way it's recorded.

2 Q. He talks about pain in the calf of the legs?

3 A. That's the way it's recorded here, sir.

4 Q. Talks about he has a record fatigue and tiredness,

5 doesn't he, sir, since the year 1950?

6 A. That's the way it's recorded in the Mount Sinai

7 report, sir.

8 Q. You have it in your report that he's always tired

9 and general fatigue since '49, do you not, sir?

10 A. It is recorded in that report as well.

11 Q. Doctor, he also has in -- according to this report,

12 belly pain from ulcers in the sixties, constipation for 20

13 years, diarrhea, colitis for 20 years, muscle cramps

14 currently?

15 A. Which page are you referring to, sir?

16 Q. 9574481, the Moses-Selikoff report, Doctor.

17 A. Okay.

18 Q. Isn't that correct, sir?

19 A. That's how it's recorded here, but it's recorded he

20 doesn't have it now.

21 Q. Doctor, where does it say he doesn't have it now?

22 A. It says, "Do you still have it," and there is a no

23 for abdominal pain, belly pain.

24 Q. Oh, I was past that, Doctor.

1 A. That's the first question you asked me, sir.

2 Q. Doctor, he also reports the next one would be
3 constipation for 20 years and still has it, correct, sir?

4 A. That's what he claims, sir.

5 Q. Diarrhea, 20 years, still has it, sir?

6 A. That's what he claims, sir.

7 Q. Muscle cramps and no date for that, sir, but
8 currently has it?

9 A. That's what he claims, sir.

10 Q. And back and neck pain, looks like often and,
11 tension, would you read that, sir?

12 A. Second word is what, sir?

13 Q. I'm sorry?

14 A. The second word?

15 Q. Tension?

16 A. Could be.

17 Q. Sir?

18 A. Yes. Yes it could be.

19 Q. And he has trouble with his sex life, doesn't he,
20 sir caused by Peyronie's Disease, sir?

21 A. That's what he claims here.

22 Q. And he says it started in the year '65?

23 A. That's what he claims.

24 Q. And he says he still has the trouble with the sex

1 life, doesn't he, sir?

2 A. That's what he claims here, sir, in this --

3 Q. Doctor, this is what I'm asking you about. You
4 understand I'm asking you about this record here, sir?

5 A. Yes, sir.

6 Q. And, Doctor, on the page numbered 9574400 he talks
7 about -- somebody notes at least there that he got B12 shots
8 for 20 years, isn't that correct, sir?

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

10 Q. And, Doctor, the next page, 9574401, he describes a
11 personality change while working with 2,4,5-T, the depression
12 we talk about, and numbness we talk about, and difficulty
13 walking, is that correct, sir?

14 A. Those are listed with dates.

15 Q. And, Doctor, there is also a note there that he's
16 had problems in the endocrine metabolic area about the
17 decrease in sexual desire, difficulty in erection and so
18 forth, and says see special penile deformity problem, does it
19 not, sir?

20 A. Yes, but there is no checking of any of these, sir.

21 Q. Doctor, do you believe that we cannot see that,
22 sir? You know we can all see that, don't you, sir? I'm
23 asking you about what was written there, sir?

24 A. Yes.

1 Q. That is written there, isn't it, sir? Isn't it
2 written there as I've read it to you?

3 A. Yes, it is written there, yes, sir.

4 Q. The next page -- not the next page on yours, but
5 it's the next page on the jurors' exhibit, 9574439, I believe
6 it's tab numbered 7. Would you turn to that, please, sir?

7 A. 4439, sir?

8 Q. Yes.

9 A. I have 7 as 4481 -- it's under 6, sir, I'm sorry.

10 Q. I mistabbed them.

11 A. That's all right.

12 Q. Doctor --

13 A. No problem. Page 4439 report for his
14 hospitalizations, does it not, sir, shows that he's had some
15 30 hospital admissions?

16 A. That's what this record shows.

17 Q. And, Doctor, it shows the reasons for it is for the
18 chloracne for several times, doesn't it, sir, and peripheral
19 neuropathy, severe after the 1952 explosion?

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

21 Q. Also shows he has various attacks and has been in
22 the hospital for the paroxysmal attacks, plus tachycardia and
23 emphysema, correct, sir?

24 A. That's true, sir.

1 Q. Doctor, the report that you made in 1979 for Paul
2 Willard, as we have already gone through before, he has a
3 long list of problems that he has currently and that he tells
4 you started in 1949, isn't that correct, sir? That would be
5 sleeplessness, Page 1718, sleeplessness, nightmares, muscle
6 weakness, paresthesia, he can't recall when it started,
7 dizziness, depression, memory poor or change in memory,
8 always tired, general fatigue, nervousness and sleepiness, is
9 that correct, sir?

10 A. If you are looking at Page 18, that's what is
11 recorded by the interviewer.

12 Q. And, Doctor, you -- he also describes on Page 18
13 that his -- he has a memory change to events in the last 15
14 years, doesn't he, sir?

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

16 Q. That his vision gets cloudy and episodic?

17 A. That's the way it reads, sir.

18 Q. Now, Doctor, there are a number of current problems
19 that this man has according to these various records that we
20 have looked at, problems that if he is to be believed, and
21 I'm asking you to assume that he is to be believed, that he's
22 telling the truth, he's had a number of problems that are
23 recurrent and did not go away, according to these records,
24 isn't that correct, sir?

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

3 THE COURT: Yes.

4 MR. HEINEMAN: Your Honor, there is absolutely no
5 basis for assuming that this man, this Willard is telling the
6 truth. There records that Mr. Carr has gone through are rife
7 with inconsistencies. Willard, according to Dr. Suskind --

8 THE COURT: Keep your voice down.

9 MR. HEINEMAN: And prior testimony, and according
10 to the examination records, is an absolute crock, and all of
11 his -- all the records demonstrate the guy is a crock and it
12 is --

13 THE COURT: Keep your voice down.

14 MR. HEINEMAN: It is improper to ask this man to
15 assume that the guy is telling the truth. There isn't any
16 evidence that he's telling the truth.

17 MR. CARR: This doctor has stated before that he
18 believed all of these men were telling the truth. He also
19 recorded that again when we went through with Mr. Willard
20 specifically. He has testified that all of these men with
21 the exception of Emmet Null --

22 MR. HEINEMAN: Already testify Kyle was not telling
23 the truth. He's listed six of these men that he thought were
24 exaggerating in his testimony. And, I'll be happy to find

1 that in my notes for the Court, but he has listed six of them
2 he thought were exaggerating and I believe Willard was one of
3 them, and he has previously testified that I -- that Willard
4 may have believed some of these things, but the fact of the
5 matter is they weren't true. Now, that's what he's testified
6 to about Willard in the past.

7 THE COURT: There is sufficient basis in the record
8 for Mr. Carr to ask that that assumption be made. Your
9 objection is overruled.

10 MR. HEINEMAN: May I define for the record what I
11 mean by the word crock?

12 THE COURT: I think that's obvious.

13 MR. HEINEMAN: That's a hypochondriac.

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

15 Q. Now, would you answer my question, please, sir?

16 A. Would you repeat the question, please?

17 (Court Reporter read the previous question.)

18 A. No, sir, it's not true, sir.

19 Q. Are you assuming that he's telling the truth,
20 Doctor?

21 A. I am. I have to assume, I have to go along with
22 your assumption.

23 Q. Are you assuming that he's telling the truth?

24 A. I'm going along with your assumption that he's

1 telling the truth.

2 Q. And, he had a large number of problems in 1953, did
3 he not, sir?

4 A. He had --

5 Q. According to your --?

6 A. He had some problems in 1953, which we have
7 commented on, sir.

8 Q. Yes, Doctor, you found that his complaints were
9 significant in 1953, didn't you, sir?

10 A. That was only part of our finding, sir, yes.

11 Q. Did you not find in your professional judgment the
12 man had significant problems in 1953?

13 A. Right, but not necessarily physical, sir.

14 Q. Doctor, do you mention anywhere here other than
15 when you testified in front of this jury -- didn't you tell
16 us that he was one of these that had these significant
17 problems?

18 A. Yes, sir, on Page 46 of my 1953 report.

19 Q. And, Doctor, didn't you also tell us on Page 41 of
20 your 1953 report that his symptoms were not filed, that they
21 were significant problems?

22 A. Yes, I did, but I also said on Page 46 that he's an
23 unstable person and has made a poor adjustment and there is a
24 serious possibility that his heart disease is iatrogenic,

1 which is what we think -- which is what we thought in 1979
2 because his EKG was normal.

3 Q. Doctor, he's got a lot of problems other than
4 possible heart disease, hasn't he?

5 A. Yes, sir, and many of them are --

6 Q. Doctor, I'm relating my question, sir, to his
7 nightmares, his paresthesia, dizziness, depression, those
8 other things that you found in him, the fatigue in 1953, sir?

9 A. Yes, sir.

10 Q. He had significant problems according to what you
11 reported in your report in 1953, did he not, sir?

12 A. Yes, sir, they were complaint problems.

13 Q. Doctor, we have gone all through the complaints and
14 the symptoms and over the signs and you told us that you
15 believe this man, like all the others, was telling you the
16 truth, did you not, sir?

17 A. Yes, sir, we did.

18 Q. Now, Doctor, if you assume that he's telling you
19 the truth, he has had a number of problems that did not go
20 away. If you assume he's telling you the truth, isn't that
21 correct, sir?

22 A. I don't understand the question, sir.

23 Q. What about the question don't you understand,
24 Doctor?

1 A. I don't understand --

2 Q. Do you understand whether or not he's telling the
3 truth?

4 A. Which problems are you referring to?

5 Q. Doctor, a number of problems. Do we need to relate
6 the problems that he reported to you in 1979, that he had
7 muscle weakness, paresthesia, dizziness, depression, poor
8 memory, fatigue, nervousness, sleeplessness, cloudy vision
9 and loss of libido dating from '65, and nightmares and
10 sleeplessness, did he not, sir? All of those problems he
11 reported to you in '79?

12 A. His loss of libido, no, sir, he said he could
13 function adequately, sir.

14 Q. Doctor, so that we won't argue about that point,
15 these others he reported to you, did he not, in '79?

16 A. Well, I think I would like them enumerated, because
17 there are a bunch of different types of problems, some of
18 them can be psychosomatic and believed and --

19 Q. Doctor, my question to you is fairly clear. He
20 reported a number of problems to you in 1979, did he not,
21 sir?

22 MR. HEINEMAN: Your Honor, I'll object. The
23 witness has -- the question is clearly vague and ambiguous to
24 the witness and I object to it.

1 THE COURT: Objection is overruled. The question
2 is clear. Answer the question, Doctor.

3 A. Repeat the question

4 (Court Reporter read the previous question.)

5 A. Yes, he did, he reported a number of problems.

6 Q. And, Doctor, if -- and he also reported a number of
7 problems to the Moses-Selikoff group, did he not, sir?

8 A. According to their records, yes, he did.

9 Q. And, Doctor, he also reported a number of problems
10 in the record of '75 and the Herbert J. Thomas Hospital
11 record, did he not, sir, Plaintiff's Exhibit 1777?

12 A. He reported several kinds of problems, yes, sir.

13 Q. And, Doctor, if this man is to be believed, and if
14 he really has these problems, he has a number of problems
15 that did not go away, isn't that --

16 A. No, sir.

17 Q. Doctor, are you assuming that he's to be believed?

18 A. Yes, sir.

19 Q. Are you assuming that the problems didn't go away?

20 A. No, I'm not --

21 Q. Doctor, I've asked you to assume that, sir. Would
22 you please assume that?

23 A. How can I assume that, sir?

24 MR. HEINEMAN: Objection. He didn't ask him to

1 assume that.

2 A. You are asking me to assume it and then ask me a
3 question did it go away. You are giving me the answer in the
4 beginning by the assumption.

5 Q. I've done that any number of times. You've said --
6 I asked you the other day if it's true, it's true, isn't it,
7 Doctor? You said no.

8 THE COURT: Mr. Carr, would you rephrase the
9 question, please?

10 Q. Doctor, if he had these problems, if he's telling
11 the truth in 1979, these problems did not go away with
12 passage of time, did they, sir?

13 A. No, sir.

14 Q. Is that a response that they did go away?

15 A. They did go away. Some of them did.

16 Q. Doctor, some of them did, but some of them did not?

17 A. Well, I think we have to know which ones you are
18 talking about.

19 Q. All right. Doctor, which problems in your judgment
20 did not go away?

21 A. Which problems are you asking me about?

22 Q. The problems that you did say did not go away,
23 which were they, sir, in '79? If the man's to be believed --

24 A. The problem of his complaint of heart disease

1 didn't go away.

2 Q. All right, what else did, Doctor?

3 A. However there were complaints of heart disease but
4 he had no heart disease.

5 Q. Doctor, my question is what else?

6 A. There were no findings of heart disease.

7 Q. What other problems, Doctor, did not go away in
8 '79, if the man is to be believed?

9 A. His psychoneurosis, sir.

10 Q. Where does it say he's psychoneurotic, Doctor?

11 A. I believe we said that in 1953, sir.

12 Q. Where did you say that, Doctor? Would it help you
13 on Page 46, Doctor, is were you describe his psychological
14 condition.

15 A. Yes, sir, those are symptoms -- we have he is a
16 rather unstable person who has made a very severe, very poor
17 psychological adjustment to his original illness. That's
18 characteristic of a psychoneurosis, sir.

19 Q. All right, Doctor. Dr. Nestmann has found that a
20 number of these men had severe psychoneurosis following the
21 explosion, hadn't he, sir?

22 A. No, sir.

23 Q. He has not, Doctor?

24 A. No.

1 Q. Doctor, are you looking at the Exhibit 1754?

2 Doesn't he say he found it in most of them, sir?

3 A. That isn't what it says, sir.

4 Q. Doctor, doesn't it say we discussed the findings of
5 Doctor R. H. Nestmann concerning psychoneurosis in most of
6 the employees he has examined for us, doesn't it say that,
7 sir?

8 A. That's the way it reads, but it doesn't mean that
9 they had -- they had psychoneuroses. The test that he uses
10 is not --

11 Q. Isn't his statement that he found it upon his
12 examination whether the man is telling the truth or whether
13 he made it up, whether it exists or doesn't exist, isn't the
14 man saying, Doctor, that he found psychoneurosis in most of
15 the employees he has examined for Monsanto?

16 A. I don't know, sir, I can't remember whether that
17 was his conclusion.

18 Q. Look at 1754, Doctor.

19 A. I have it right in front of me, sir.

20 Q. Isn't that what that report says?

21 A. Not necessarily, sir.

22 Q. Doctor, doesn't it say it discussed the findings
23 concerning psychoneurosis?

24 A. Yes.

1 Q. Where does it say he found the psychoneurosis?

2 A. It doesn't say he found it, it says concerning
3 psychoneurosis in most of the employees.

4 Q. In most of the employees?

5 A. Correct.

6 Q. What he's telling you in most of the employees they
7 got psychoneuroses?

8 A. Not necessarily.

9 Q. Oh, Doctor, you found at least one man had
10 psychoneurosis, didn't you, sir?

11 A. Yes, I believe Mr. Willard.

12 Q. Following the explosion, correct, sir?

13 A. No, it took some time, I believe.

14 Q. Well, did he have it following the explosion?
15 Don't you say he's unstable following the original accident?

16 A. He could have been unstable before the explosion,
17 sir.

18 Q. You didn't say that, did you?

19 A. No, but I didn't examine him before the explosion.

20 Q. You didn't say that, did you, sir? What you said
21 in your 1953 report that he was a psychologically unstable
22 person after the explosion, isn't that what you found?

23 A. Doesn't say after the explosion. There is nothing
24 in here which refers this psychoneurotic condition to the

1 explosion.

2 Q. Doctor, do you have anything, any record at all to
3 indicate the man was a psychoneurotic before the explosion?

4 A. I don't have it, but I didn't examine him, sir.

5 Q. My question is, is there any record in existence
6 that you are aware of to show that the man was a
7 psychoneurotic before the explosion?

8 A. I can't tell you, I don't know.

9 Q. Then the answer to my question is you don't know of
10 any such records, isn't that correct?

11 A. I don't know of such a report. They may exist, but
12 I haven't seen it.

13 Q. There may be indeed, he may be as crazy as a
14 fruitcake, but there is no record that you are aware of,
15 isn't that right, Doctor, to support such a conclusion?

16 A. I don't know of any record. I haven't seen any.

17 Q. Isn't the answer to my question, so far as you
18 know, there are no records to show --

19 A. No, I would say I haven't seen it. That's
20 different. That's different.

21 Q. Doctor --

22 A. There may be records.

23 Q. And, Doctor, I didn't say that, did I? I said as
24 far as you know Mr. Physician, there are no records that you

1 could base a diagnosis on that the man was psychoneurotic
2 before the explosion, isn't that correct, sir?

3 A. I haven't seen any records, sir.

4 Q. Could you answer my question, Doctor?

5 A. There are no records that I know of.

6 Q. And, Doctor, Dr. Nest -- you found, however, that
7 he was psychoneurotic after the explosion, didn't you, sir?

8 A. I believe that I found that he was psychoneurotic
9 in 1953, sir, yes.

10 Q. That is after the explosion, isn't it, Doctor?

11 A. In time that is after the explosion.

12 Q. And, Doctor, among other problems, that among
13 others, he had problems that did not go away, isn't that
14 right, sir? The psychoneurosis didn't go away, did it,
15 Doctor?

16 A. The psychoneurosis continued sir, yes.

17 Q. And he had other problems that did not go away,
18 didn't he, Doctor?

19 A. Yes, there were a few.

20 Q. Doctor, the few includes muscle weakness,
21 paresthesia, dizziness, depression?

22 A. No, sir, maybe not -- maybe depression, but not the
23 others.

24 Q. Don't you check on Page 18 that he had these

1 problems since '49; the memory change, the fatigue, the
2 nervousness, the sleepiness?

3 A. Not confirmed by the doctor's interviews.

4 Q. Doctor, I didn't ask you about any confirmation,
5 did I, sir? I'm asking about the problems the man said he
6 had in 1979. You said there were a few. In point of fact
7 there were many, weren't there, sir?

8 A. No, sir.

9 Q. Doctor, there are at least eight on Page 18, aren't
10 there, sir, that he dates to 1949? Seven. Muscle weakness
11 he dates to '49, doesn't he, sir?

12 A. Yes.

13 Q. Paresthesia he doesn't date to a particular time,
14 says he can't recall, correct, sir?

15 A. Right.

16 Q. Dizziness he dates to '49, doesn't he, sir?

17 A. Yes.

18 Q. Depression to '49?

19 A. Yes, sir.

20 Q. The fatigue to '49?

21 A. Yes.

22 Q. The nervousness to '49?

23 A. Yes.

24 Q. The sleepiness to '49?

1 A. Correct.

2 Q. The sleeplessness to '49, on Page 17?

3 A. Yes.

4 Q. And the nightmares to '49, correct, sir?

5 A. That is correct, sir.

6 Q. Now, that's a total of eight problems, isn't it,
7 sir, that he dates to 1949, according to your records?

8 A. No, sir.

9 Q. Could you count those please for us, Doctor?

10 A. Isn't a matter of numbers, sir.

11 Q. Could you count those for us, please, sir?

12 A. Those are eight.

13 Q. Yes.

14 THE COURT: Mr. Carr, is this a good point to
15 break?

16 MR. CARR: Yes, Your Honor. Sure.

17 THE COURT: Fine. We will recess at this time.

18 Tomorrow is a court holiday due to the primary
19 election, so we will resume again Wednesday morning at 9:30.

20 I remind you, as I do on any overnight break, that
21 besides the regular admonishments on a break, you are not to
22 read, listen to, or watch anything about this case in
23 particular or subject matter in general in any of the media.

24 Thank you for your attention and cooperation. See

1 you Wednesday morning. Court is adjourned.

2 COURT ADJOURNED:

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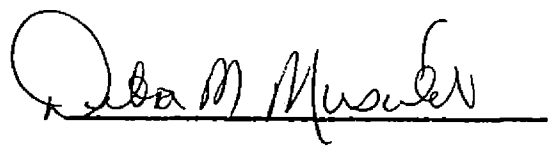
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STATE OF ILLINOIS)
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TWENTIETH JUDICIAL CIRCUIT) SS
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COUNTY OF ST. CLAIR)

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

Dated this 21 day of March, 1986.



1 STATE OF ILLINOIS)
)
2 TWENTIETH JUDICIAL CIRCUIT) SS
)
3 COUNTY OF ST. CLAIR)

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5 I, RICHARD P. GOLDENHERSH, one of the Judges in and
6 for the Twentieth Judicial Circuit, do hereby certify that I
7 have examined the aforesaid transcript of proceedings, and
8 certify the foregoing to be a true and accurate transcript of
9 the testimony and proceedings in the above-styled cause.

10 Dated this _____ day of March, 1986.

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HON. RICHARD P. GOLDENHERSH

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