

COPY

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

----- x VOLUME II
:
WILLIAM R. GAFFEY, :
:
Plaintiff :
:
vs. : Cause No. 91-1938-C
:
PETER MONTAGUE, et al., : (CAS)
:
Defendants :
:
Friday, October 21, 1994
----- x Washington, D.C.

Continuation of Deposition of:

PETER GUNN MONTAGUE

a witness of lawful age, called on behalf of the Plaintiff
in the above-entitled action, pending before the United
States District Court of the Western District of Missouri,
Eastern Division, before Margaret Sue Foster, Notary Public
in and for the District of Columbia, taken at the offices of
Debevoise & Plimpton, 555 Thirteenth Street, Northwest,
Washington, D.C., beginning at 9:25 o'clock a.m.

APPEARANCES:On behalf of the Plaintiff:

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On behalf of the Defendant Environmental Research
Foundation:

EDWARD M. ROTH, ESQ.
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On behalf of the Defendant Peter Montague:

GERSON SMOGER, ESQ.
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* * *

I N D E X

Examination by:

<u>Witness</u>	<u>Mr. Schulten</u>	<u>Mr. Smoger</u>	<u>Mr. Roth</u>
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PETER GUNN MONTAGUE

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P R O C E E D I N G S

Whereupon,

PETER GUNN MONTAGUE

was recalled as a witness, and having been previously, duly sworn by the notary public, was examined further by counsel and testified as follows:

FURTHER EXAMINATION BY COUNSEL FOR THE PLAINTIFF

MR. SCHULTEN: Mr. Montague, this is a continuation of the deposition we began yesterday.

Mr. Montague, I want to follow up on several, but in particular, to begin with this morning one statement that you made yesterday regarding your telephone conversations with Kate Jenkins. I believe you testified yesterday that in those telephone conversations she called you regarding EPA documents or hearings to alert you to hearings that were coming up and documents that may be published or release.

And then I believe you said that a second item that she discussed with you were milestones in her litigation with her supervisor at EPA.

BY MR. SCHULTEN:

Q And the question I have to follow up on that is: Do you know, did Ms. Jenkins tell you or do you know personally

1 where the litigation that Ms. Jenkins was engaged in with her
2 supervisor at EPA was pending?

3 MR. ROTH: I'm going to object to the preamble to
4 the extent that it characterizes his past testimony. It
5 differs from what the record will reflect. I don't want his
6 answering the question to be some sort of affirmation because
7 I don't think that your preamble in all respects correctly
8 states his testimony, but subject to that—

9 MR. SCHULTEN: With that limitation.

10 MR. ROTH: —if you know where litigation between
11 Kate Jenkins and her supervisor was pending, in what
12 jurisdiction, you may answer.

13 MR. SMOGER: Objection. Compound. And also don't
14 answer to the extent that you acquired any of that
15 information from your attorneys. But if you know from your
16 own, separately from stuff counsel's told you, go ahead.

17 THE WITNESS: I don't know very much about Kate
18 Jenkins' relationship to her employer. It is my general
19 understanding that it was a matter within the EPA and the
20 federal Department of Labor, and beyond that I really don't
21 know what— I don't know the particulars of which offices
22 within those agencies were involved?

1 BY MR. SCHULTEN:

2 Q Do you know whether an actual lawsuit was filed in
3 a court?

4 A Oh, I see. I understand. I don't think there was
5 a lawsuit in a court. Did I give you that impression with
6 the word "litigation"?

7 Q Litigation, right.

8 A I'm sorry. I was using it in the sense of a
9 contentious matter. I don't know whether it was formally a
10 litigation. I'm not even sure that I know legally what that
11 word means. But there was a matter of dispute, a formal
12 dispute involving Dr. Jenkins, and other EPA officials, and
13 the Department of Labor. Beyond that I don't know much.

14 Q Okay. Did she ever tell you that there was an
15 administrative proceeding going on where she had filed a
16 complaint with an administrative agency?

17 A I knew that. Whether or not I knew it from her, or
18 from some other source, I'm not really sure.

19 Q And you think that it was within the Department of
20 Labor that she filed?

21 A No. I'm pretty sure that it began within EPA, and
22 that it eventually— Eventually the Department of Labor became

1 involved. But I don't think it began with the Department of
2 Labor.

3 Q Okay. Now, getting back to some of the questions
4 that we ended up with yesterday, do you know whether or not
5 you have participated— Of the conferences that you told me
6 about yesterday that you participated in as a panelist, or as
7 a presenter, can you recall whether or not Ellen Silbergeld
8 also participated in any of those conferences as a panelist
9 or presenter?

10 MR. ROTH: You're talking about ever.

11 MR. SCHULTEN: No. Just of the ones that he
12 described to me yesterday that he participated in.

13 MR. SMOGER: The ones he discussed yesterday.

14 MR. ROTH: I see. Just so I'm clear in my mind.
15 We talked about a lot of different conferences and so forth.

16 MR. SMOGER: It's okay.

17 MR. ROTH: Well, all right. Go ahead.

18 THE WITNESS: I believe that she did not
19 participate in any of those conferences that I described
20 yesterday.

21 BY MR. SCHULTEN:

22 Q Do you know whether or not she participated in the

1 second citizens conference on dioxin?

2 A I was at the conference and never saw her there.

3 Q Mr. Montague, what do you contend is the fraud in
4 the Zack-Gaffey study?

5 MR. SMOGER: Objection. Calls for a legal
6 conclusion, and the document speaks for itself. He's not
7 making a contention.

8 MR. ROTH: I think that the plaintiff in this case,
9 of course, has the burden of proving, of disproving the
10 allegations, the allegedly libelous allegations. And also
11 there's a lack of foundation, and to the extent that the
12 witness has learned theories of defense from counsel, and
13 will be producing expert witnesses who will further explain
14 that, but subject to that, you can describe what you— I
15 trust what you're asking is what he, sitting here today,
16 thinks is the fraud in the Zack-Gaffey study.

17 MR. SCHULTEN: That's my question.

18 MR. SMOGER: I'm going to add to that objection
19 because you're placing it into now, the question. Are you
20 asking what he believed to be the fraud at the time he wrote
21 the article, or all the various frauds that he's discovered
22 from his attorneys since? which would be privileged and part

1 of the defense in this case.

2 MR. SCHULTEN: I'm not asking for any information
3 that you've been provided by your attorneys. Okay. I'm not
4 asking for that.

5 BY MR. SCHULTEN:

6 Q I'm asking, as you sit here today, what do you
7 believe is fraudulent about the Zack-Gaffey study?

8 MR. SMOGER: Objection as to relevance for his
9 point. Are you asking at the time of the article, or do you
10 want to know what he thinks today? You're asking what he
11 thinks today, or what he's received from his attorneys?

12 MR. ROTH: If you're able to separate out in your
13 mind, if you have independent views of what you consider to
14 be the fraud in the Zack-Gaffey study as opposed to things
15 that you've learned in communications, privileged
16 communications with your counsel, and as through the expert
17 consultants and so forth, you can answer the question.

18 MR. SCHULTEN: Okay. To avoid all of that, let me
19 withdraw the question, and let me ask it couched in these
20 terms.

21 BY MR. SCHULTEN:

22 Q What did you understand, Mr. Montague, at the time

1 | you wrote your article March 7th in 1990, or about that time,
2 | what did you understand to be the fraud in the Zack-Gaffey
3 | study? What was fraudulent?

4 | MR. ROTH: Could you put 171 back in front of him
5 | and the other exhibits in case he would like to refer to
6 | them?

7 | (Document is put in front of the witness.)

8 | MR. ROTH: Thank you.

9 | THE WITNESS: Would you repeat the question so I
10 | know exactly what you're asking me?

11 | BY MR. SCHULTEN:

12 | Q Yes. At the time that you wrote the article in
13 | 171, what did you believe to be the fraud? What was
14 | fraudulent about the Zack-Gaffey study?

15 | MR. SMOGER: Objection. Compound.

16 | MR. ROTH: I'm going to object to the question to
17 | the extent that it's inconsistent with— There's a lack of
18 | foundation. The witness has already testified as to what the
19 | object of the article was and what he was reporting on and
20 | how he viewed the information that he received as opposed to
21 | it being— But subject to that, if you can answer the
22 | question, go ahead.

1 THE WITNESS: No. 171 was a report that
2 independently, within a few months of each other, government
3 officials of two governments had said they had evidence of
4 fraudulent manipulation of data in dioxin studies of dioxin-
5 exposed workers, and that the nature of the fraud, fraudulent
6 manipulation, was such that these studies purported to show
7 that no harm had occurred to dioxin-exposed workers, when in
8 fact harm very well may have occurred among those workers as
9 a result of dioxin exposure.

10 And since the material that I had before me made
11 good sense and was internally consistent, and was reasonable,
12 I had no reason to doubt that the nature of the fraud was as
13 suggested by the officials of those two federal governments.

14 BY MR. SCHULTEN:

15 Q So did you personally believe at the time you wrote
16 it that the Zack-Gaffey study was fraudulent? Please say yes
17 or no.

18 MR. SMOGER: Objection. Argumentative.

19 MR. ROTH: Yes. And the witness can answer the
20 question as he sees it. He's not bound by a yes or no answer
21 if he believes that more words are required to be responsive
22 to your question.

1 BY MR. SCHULTEN:

2 Q Did you personally believe that the Zack-Gaffey
3 study was fraudulent at the time you wrote the article?

4 A I had no reason to believe that what I was
5 reporting was in any way untruthful, or inaccurate, or
6 questionable.

7 Q Did you have any conversations with Rex Carr or
8 attorneys in his office prior to the time that you wrote the
9 article?

10 A Prior to?

11 Q March 7th, 1990.

12 A Did I have contact with Rex Carr or anyone in his
13 office?

14 Q Correct.

15 A No.

16 Q How about subsequent to the article? Did you
17 personally contact Mr. Carr or any other person in Mr. Carr's
18 office regarding the matters in the article in Edition 171?

19 MR. SMOGER: Don't answer that to the extent that
20 anything you were doing was to seek representation from Mr.
21 Carr or anyone from his office.

22 THE WITNESS: Okay. I did contact Mr. Carr, wrote

1 him a letter.

2 BY MR. SCHULTEN:

3 Q When did you write him a letter?

4 MR. ROTH: If you have the letter, why don't you
5 produce it for the witness to see?

6 MR. SCHULTEN: Yes, I was looking for it.

7 THE WITNESS: Shortly after I heard from Mr. Gaffey
8 that he believed he had been unfairly treated in No. 171.

9 MR. SCHULTEN: I tell you what, I have the letter
10 here and I'll show it to you in just a moment. We're going
11 to be getting through each of those letters, and we'll just
12 do it in chronological order.

13 MR. ROTH: Do you want to mark them all now,
14 Cordell, so we can—

15 MR. SCHULTEN: No, I don't. I want to just move
16 through some of this stuff as quickly as we can.

17 MR. ROTH: All right.

18 BY MR. SCHULTEN:

19 Q Did you get a response back from Mr. Carr to that
20 letter?

21 A I received a letter in response.

22 Q From Mr. Carr at his office?

1 A I believe it was from Mr. Carr himself.

2 Q Do you recall about when?

3 A Approximately ten days after I initially wrote to
4 him. Maybe two weeks, I don't know. Not a long time after I
5 wrote to him.

6 Q Do you still have a copy of that letter in your
7 possession?

8 A I do.

9 MR. SCHULTEN: That was not one of the items that
10 was produced. I think that was within the scope.

11 MR. SMOGER: It was within the scope, but it was
12 all in contemplation of litigation, so I'm not sure. I think
13 that the first one that he wrote to Mr. Carr was
14 inadvertently produced. And the question is whether Mr.
15 Carr, writing back, should also be produced. They produced
16 that letter, but that was all done by the generation of the
17 threatened lawsuit by Mr. Gaffey, and at that time he's doing
18 it in preparation of litigation. So we'll look to see, but
19 part of it is—

20 MR. SCHULTEN: Well, if you've got a claim of
21 privilege, then you need to identify it and give me the basis
22 of the claim.

1 MR. SMOGER: We will do that, but I noticed that
2 that was sent out, and for that reason.

3 BY MR. SCHULTEN:

4 Q Did you, Mr. Montague, attend any part of the
5 Kemner-versus-Monsanto trial in Illinois back in 1985, and I
6 think it also extended partially into 1986? Did you
7 personally attend any of that trial?

8 A No.

9 Q Okay. Have you ever had any communications or
10 conversations with any of the individuals who served as
11 expert witnesses in the Kemner-versus-Monsanto trial?

12 MR. SMOGER: Objection. Foundation. You haven't
13 established that he knows who anybody was, so he might have,
14 but if he doesn't know who the expert witnesses were.

15 MR. ROTH: Do you want to give him some names?
16 Maybe he can tell you whether he's talked to them? Do you
17 know?

18 THE WITNESS: I don't know who the experts were. I
19 mean I know a few names, but it was a three-and-a-half year
20 litigation. There probably were a lot of experts that I may
21 not have—

22 MR. SMOGER: Well, is there anybody that you know

1 was an expert?

2 THE WITNESS: That I have talked to?

3 MR. SMOGER: I am asking a simple question. Do you
4 know anybody that was an expert in the Kemner-versus-Monsanto
5 case? If I walk up to you and say Kemner-versus-Monsanto,
6 who were the experts? what do you know?

7 THE WITNESS: Was George Roush an expert? I don't
8 know.

9 MR. SCHULTEN: Yes, he was.

10 THE WITNESS: I've never talked to George Roush,
11 but that's responsive to your question. I believe he was an
12 expert in the case. But I've quickly run out of names.

13 BY MR. SCHULTEN:

14 Q Right. Rather than going into— and I'm trying to
15 do this as efficiently as I can, so let me try and rephrase
16 the question this way. Have you ever had any conversations
17 with any individual who testified at the Kemner-versus-
18 Monsanto trial regarding testimony about the Zack-Gaffey
19 study?

20 A Again, I don't know who those parties were so I
21 don't know whether I've talked to them.

22 Q Well, no. I'm asking specifically, did you talk to

1 someone whom you understood testified at the Kemner-versus-
2 Monsanto trial about the Zack-Gaffey study?

3 A I have never spoken to a person who I knew had
4 testified in any part of the Kemner litigation, although they
5 may have without my knowledge have testified at the Kemner
6 litigation.

7 Q I understand that. That's a fair answer. But just
8 to clarify it, I just want to make sure I understand your
9 answer.

10 So are you testifying that you have not talked to
11 any expert who testified at the Kemner-versus-Monsanto
12 lawsuit, you have not talked to them about any testimony that
13 they may have given concerning the Zack-Gaffey study?

14 MR. SMOGER: At the Kemner--

15 MR. SCHULTEN: At the Kemner, right. What I'm
16 asking is:

17 BY MR. SCHULTEN:

18 Q Have you had any conversations with people about
19 their testimony at the Kemner-versus-Monsanto trial about the
20 Zack-Gaffey study?

21 A No.

22 Q Fine. That's the answer. Mr. Montague, what are

1 the facts upon which you base— Well, let me ask the question
2 this way. Let's mark the following exhibits 5 through 12.

3 (Exhibit Nos. 5 through 12 [Montague]
4 were marked for identification.)

5 Exhibit No. 5 has been placed in front of you, Mr.
6 Montague. Is that a copy of a letter dated April 23rd, 1990
7 to you from William R. Gaffey?

8 A (Reads.)

9 Q I'm just asking if this is a copy of a letter from
10 Mr. Gaffey, Dr. Gaffey to—

11 A It looks like a copy of a letter that Mr. Gaffey
12 sent me.

13 Q And that you received? Do you recall receiving it—

14 A I do.

15 Q —in late April 1990? That's Exhibit No. 5. Could
16 you look at Exhibit No. —

17 A I don't know when I received it, but shortly after
18 it was dated.

19 Q Okay. Could you look at Exhibit No. 6, please, the
20 next document in the stack? Is that a copy of your letter to
21 Dr. Gaffey dated April 29th, 1990?

22 A It is.

1 Q And did you send that letter to Dr. Gaffey?

2 A I did.

3 Q And was that letter in response to Dr. Gaffey's
4 letter to you which is Exhibit No. 5?

5 A Yes.

6 Q Could you look then at Exhibit No. 7, which is a
7 sizable document with a clip on it. Is that a copy of Dr.
8 Gaffey's May 11, 1990 letter to you? I'm going to be asking
9 about the attachments, which I think is what you're looking
10 at there. But just initially, is that a copy of the letter
11 you received from Mr. Gaffey?

12 MR. SMOGER: Just this. Disregarding anything else
13 at the moment.

14 BY MR. SCHULTEN:

15 Q Just the first three pages there, is that a copy of
16 the letter you received from Mr. Gaffey shortly after May
17 11th, 1990?

18 A Yes.

19 Q And do you see in the first paragraph, was it your
20 understanding that Mr. Gaffey, Dr. Gaffey was responding to
21 your letter which we've identified as Montague Deposition
22 Exhibit 6?

1 MR. SMOGER: The only thing that we want to say is
2 that the top of the middle page is cut off, so it's not an
3 accurate reflection of the letter.

4 MR. SCHULTEN: All right. I believe that's how it
5 was produced to us. It has the Bates stamp at the bottom.

6 MR. SMOGER: Well, the Bates stamps look a little
7 higher.

8 MR. ROTH: Well, for whatever reasons, what's been
9 marked as an exhibit is missing words from the top of the
10 letter.

11 MR. SMOGER: And you should have this since this
12 was written by your client. So you should have a copy.

13 MR. SCHULTEN: Right. I'm just trying to see if
14 this is a copy of what's contained in Mr. Montague's file,
15 copy of the original.

16 BY MR. SCHULTEN:

17 Q But with that proviso about the second page, is it
18 your understanding that this letter was a response to your
19 prior letter that we've identified as Plaintiff's Exhibit No.
20 6?

21 A Yes.

22 Q And in the first paragraph of Plaintiff's Exhibit

1 No.— excuse me — Montague Deposition Exhibit No. 7, do you
2 see in the third sentence where Dr. Gaffey refers to an
3 attachment No. 1, the Zack-Suskind study?

4 A Yes.

5 Q Okay. And is the first item, next item in the
6 stack there of Exhibit 7, Attachment No. 1, the Zack-Suskind
7 study?

8 A There's some confusion. These are pages from the
9 Zack-Gaffey study attached to the Zack-Suskind study. So
10 what you've handed me as attachment 1 is really portions of
11 two different studies.

12 Q Okay. So attachment 1 is actually, if you look
13 down at the first page of attachment 1, see in the lower
14 right-hand corner the number stamped there 209?

15 A Yes.

16 Q So the Zack-Suskind study consists of pages 209
17 through 212, is that correct?

18 A That is correct. Now these are flawed copies and
19 there are words missing and letters missing, but except for
20 that, it's a copy of the study. It's not a very good copy of
21 the study, but it's a copy of the study.

22 Q Okay. And do you recall that that attachment was

1 included in Dr. Gaffey's letter to you?

2 A I believe that it was.

3 Q And then the second attachment with the pages that
4 you've previously referred to from 213 on through page 233,
5 is that a copy of the Zack-Gaffey study that was enclosed an
6 attachment to Dr. Gaffey's letter to you?

7 A It is a copy of the Zack-Gaffey study, but I don't
8 think it's the copy that was provided to me by Mr. Gaffey.

9 Q Okay. You think a different printing of the study
10 was provided to you?

11 A A different copy, I believe, was provided to me by
12 Mr. Gaffey. I could be wrong about this, but this is marked
13 Montague original, and I think this is something that I went
14 to the library and got for myself. I don't think Mr. Gaffey
15 provided this.

16 Q This is a copy of what we're referring to now is a
17 copy of the Zack-Gaffey study that you testified to yesterday
18 when you went to the library shortly--

19 A I think that's what it is.

20 MR. ROTH: You've got to let him finish asking the
21 whole question before you answer. Do you want to pose the
22 question again?

1 MR. SCHULTEN: I think we're fine. I think we
2 understand each other.

3 MR. ROTH: This was the copy that you obtained from
4 the Rutgers Medical School Library?

5 MR. SMOGER: No, no, no. Hold it a second.

6 (Mr. Smoger confers with the witness.)

7 MR. ROTH: Just so the record is clear, Peter,
8 what's in front of you is the copy that you believe is the
9 copy that you obtained before publishing 171 when you went to
10 the Rutgers Medical School Library to copy various source
11 material?

12 THE WITNESS: Correct.

13 BY MR. SCHULTEN:

14 Q Okay. Which page numbers of Exhibit No. 7 are you
15 referring to as the copy of the Zack-Gaffey study that you
16 obtained from the Rutgers Library?

17 (Mr. Smoger confers with the witness.)

18 BY MR. SCHULTEN:

19 Q I'll withdraw that question and ask it this way.
20 Did you obtain pages 214 which is one of the title pages from
21 the text edited by Tucker, Young and Gray?

22 A Just a moment. I'm trying to figure out what this

1 really is.

2 (Discussion off the record.)

3 BY MR. SCHULTEN:

4 Q Okay. I think they're in order according to the
5 Bates stamp and that's the way I— Well, let's ask the
6 question this way in order to move beyond this.

7 Is it your recollection that in Dr. Gaffey's letter
8 to you dated May the 11th, 1990, he also enclosed a copy of
9 his, of the Zack-Gaffey study?

10 A That is my recollection.

11 Q And look at the last attachment here to Exhibit No.
12 7 which begins with the Bates stamp No. 234, and has on the
13 front page here, Kemner trial transcript, July 22, 1985,
14 attachment No. 3. Is it your understanding that the
15 documents contained here compose the third attachment that
16 was enclosed in Dr. Gaffey's letter to you of May 11, 1990?

17 (Mr. Smoger confers with the witness.)

18 MR. SMOGER: Let me tell you that all of the pages
19 are included here, completely out of order, but they're all
20 here.

21 MR. SCHULTEN: They are in order according to the
22 Bates stamp but not in order according to the—

1 MR. SMOGER: This is off the record.

2 (Discussion off the record.)

3 MR. ROTH: Let me correct that saying that a copy
4 of the Zack-Gaffey study, while not consecutively numbered,
5 well, consecutively numbered according to the Bates stamp, is
6 not consecutively numbered according to the original page
7 numbering scheme, although all the pages are there.

8 MR. SCHULTEN: But all the pages are there.

9 MR. ROTH: Right. Just so we know what we're
10 talking about. Now, right now we have a question pending
11 relating to the transcript that you just showed the witness,
12 and I don't want to confuse that, one from the other. That's
13 why I wanted to clarify the record. Okay.

14 BY MR. SCHULTEN:

15 Q The question pending regarding the transcript, Mr.
16 Montague is: Is that the third attachment that was provided
17 to you by Dr. Gaffey?

18 A I believe that it is.

19 MR. ROTH: You've got to make sure he's finished
20 asking the question before you answer. Wait until he
21 finishes.

22 MR. SCHULTEN: I had finished my question.

1 MR. ROTH: Okay. But I just didn't want him to
2 step on it. It's harder for the court reporter to transcribe
3 it.

4 BY MR. SCHULTEN:

5 Q Prior to receiving that portion of the Kemner trial
6 transcript that was attachment No. 3 to Dr. Gaffey's letter
7 to you, had you ever received a copy of any portion of the
8 Kemner-versus-Monsanto trial transcript?

9 A I'm not sure.

10 Q Do you believe you may have had a portion of the
11 trial transcript before you got attachment No. 3 to—

12 A I don't think that I have. I don't think that I
13 had it, but I can't be sure that nobody had ever sent me a
14 copy of some pages out of the trial transcript.

15 Q Do you recall ever reviewing a portion of the
16 Kemner trial transcript before you were sent this attachment
17 No. 3 by Dr. Gaffey in his May 11th, 1990 letter?

18 A I do not recall that.

19 Q Let's look at Exhibit No. 8. Is Exhibit No. 8, Mr.
20 Montague, a copy of a letter from Monnye Gross to you dated
21 July 5, 1990? Is that what that's a copy of, Exhibit No. 8?

22 A I think it is.

1 Q And do you recall receiving that letter?

2 A I do.

3 Q And look at Exhibit No. 9. Is Exhibit No. 9 a copy
4 of your letter dated July 18th, 1990 to Monnye Gross?

5 A (Reads the document.) Is there a question?

6 Q Yes. Is this a copy of your letter to attorney
7 Gross dated July 18th, 1990?

8 MR. ROTH: What's the exhibit number on that?

9 MR. SCHULTEN: Exhibit No. 9.

10 THE WITNESS: Yes.

11 BY MR. SCHULTEN:

12 Q And were you in that letter, Exhibit No. 9,
13 responding to attorney Gross' letter which we've identified
14 as Exhibit No. 8?

15 A Would you ask me the question again, please?

16 Q In your letter that we have identified as Exhibit
17 No. 9, were you responding to attorney Gross' letter that
18 we've previously identified as Exhibit No. 8?

19 A Yes.

20 Q Now let's look at Exhibit No. 10. Is Exhibit No.
21 10 a copy of attorney Gross' letter dated July 31, 1990 to
22 you regarding Dr. Gaffey?

1 A Yes.

2 Q Do you recall receiving this letter, Exhibit No.

3 10?

4 A Yes.

5 Q Okay. Look at Exhibit No. 11, please. Is Exhibit

6 No. 11 your letter dated August the 8th, 1990 to attorney

7 Gross?

8 A Yes.

9 Q And did you enclose attachments in that letter,

10 Exhibit No. 11? I would refer to page 4 of the letter.

11 A Well, I'm going to read the whole letter. (Reads.)

12 What was your question about this letter?

13 Q Did you enclose attachments to this letter?

14 A It says that I did, and I believe, therefore, that

15 I did.

16 Q Okay. Is the first attachment that you footnote on

17 page 4 of Exhibit No. 11 one of the articles that you made

18 reference to yesterday authored by Alistair Hay that appeared

19 in the British journal "Nature"?

20 A The articles cited in footnote No. 1 of Exhibit No.

21 11 is one of the articles that I referred to yesterday

22 authored by Alistair Hay.

1 Q Is there a second article by Alistair Hay?

2 A I think that in 1986 there was a subsequent article
3 in "Nature" by Alistair Hay.

4 Q For the record, I've gone through your production
5 of documents, and I didn't see those enclosures. So if you
6 would make an effort to review your documents again.

7 MR. ROTH: Well, I'll look at the request and see
8 what it calls for. I don't, sitting here, know what you
9 asked for.

10 MR. SMOGER: No, no, no.

11 MR. SCHULTEN: Well, if this letter is—

12 MR. SMOGER: No, no. As far as an enclosure, this
13 has already been produced. This is a letter with attachments
14 that went to Mr. Gaffey's counsel. I would talk to Mr.
15 Gaffey's counsel about the production. This was produced
16 long before this litigation began.

17 MR. ROTH: What is it you're asking for, Cordell?

18 MR. SCHULTEN: That's fine. I appreciate that,
19 Gerson.

20 MR. ROTH: What are you looking for that you don't
21 have?

22 MR. SMOGER: They've already been sent to counsel.

1 MR. ROTH: I see. Just so I'm clear. Are you
2 looking for the attachments to that letter, is that the
3 point?

4 MR. SCHULTEN: Right. I'm simply saying that in
5 your production of documents in which you produced this
6 letter, the attachments to this letter, Exhibit No. 11, were
7 not produced.

8 MR. SMOGER: We don't know that it was produced,
9 that it was maintained in this form or that copies were sent.

10 MR. SCHULTEN: That's fine. If that's the answer,
11 that's fine.

12 MR. SMOGER: But they've already been produced to
13 Monnye Gross.

14 MR. ROTH: And I'd also note that, evidently
15 they're citations to journals that are available.

16 THE WITNESS: You can go to the library.

17 MR. SCHULTEN: Sure, I understand that.

18 MR. ROTH: Okay. It looks to me — I'm just looking
19 at it now, that all the citations, to the extent that they
20 were attachments, are things that have always been available
21 to anyone interested in procuring them just by going to,
22 probably a public library. You wouldn't even have to go to a

1 university library.

2 MR. SCHULTEN: That's fine. That's fine. Okay.

3 MR. ROTH: Well, I just don't want there to be any
4 implication—

5 MR. SCHULTEN: No, no, no.

6 BY MR. SCHULTEN:

7 Q I'm just saying there were attachments to this
8 letter which we do not have attached to the exhibit today.
9 Is that correct?

10 A I believe that's correct.

11 Q To the best of your recollection you did enclose
12 attachments to Exhibit No. 11 when you sent it to attorney
13 Gross.

14 A It's clear that I intended to, and I have no
15 recollection that I didn't attach them, so I assume that I
16 did.

17 Q Okay. Do you believe that the article that you
18 refer to in footnote 1 on page 4, the Alistair Hay article,
19 specifically mentions the Zack-Gaffey study in the article?

20 MR. ROTH: Do you have it for the witness to see?

21 MR. SCHULTEN: No, I don't.

22 MR. ROTH: Okay. If you know or remember exactly

1 what's in there.

2 THE WITNESS: Would you ask me that question again?

3 BY MR. SCHULTEN:

4 Q Is it your recollection as you sit here today, Mr.
5 Montague, that the Alistair Hay article entitled "Assessing
6 the Risk of Dioxin Exposure" includes in the article specific
7 references to the Zack-Gaffey study? Do you have that
8 recollection as you sit here today?

9 A Specific references to the Zack-Gaffey study.

10 Q Right.

11 A To me the word "reference" in this context
12 indicates a footnote. I don't know whether they footnoted
13 the Zack-Gaffey study. They certainly discussed it.

14 Q They did discuss and described it as the Zack-
15 Gaffey study?

16 A That is my recollection.

17 Q Is that one of the reasons why you enclosed that as
18 an attachment to your letter?

19 MR. ROTH: I'm sorry. Could you repeat the
20 question again just for counsel? Could you just read it
21 back, that last question?

22 MR. SCHULTEN: No, I'll repeat it. I said:

1 BY MR. SCHULTEN:

2 Q Is that one of the reasons why you enclosed it as
3 an attachment to your letter?

4 MR. ROTH: Okay. I just had missed it. I'm sorry.

5 THE WITNESS: I believe that I attached it to my
6 letter because I felt that Monnye Gross should have that
7 information in making a judgment about what the true
8 situation was.

9 BY MR. SCHULTEN:

10 Q Your footnote 1 refers to a statement on page 2 of
11 Exhibit No. 11. If you'll turn to page 2 of Exhibit No. 11,
12 it's the fourth paragraph on page 2, last sentence which I'm
13 going to read for you: "Furthermore, according to published
14 information, Ms. Zack has admitted in a court of law that the
15 four workers listed in the two different studies are the same
16 four workers," and then the footnote reference. Do you see
17 that?

18 A I do.

19 Q Okay. Do you believe that the Alistair Hay article
20 is the source of authority for your statement that Ms. Zack
21 has admitted in court, in a court of law, that the four
22 workers in the two different studies are the same four

1 workers?

2 MR. SMOGER: Object to the extent that the article
3 will speak for itself. You can only do it from the best of
4 your memory and what your understanding of this paragraph is
5 at this time.

6 MR. ROTH: Right.

7 BY MR. SCHULTEN:

8 Q So let me withdraw the question and ask the
9 question this way: Why did you put footnote 1 at the end of
10 that sentence?

11 MR. SMOGER: It's actually at the end of the
12 paragraph.

13 THE WITNESS: Why did I put the footnote there?

14 MR. SCHULTEN: Yes.

15 THE WITNESS: So that the reader of the letter
16 would know what my source of information was for the sentence
17 at the end of which the footnote appears.

18 BY MR. SCHULTEN:

19 Q So it's the Alistair Hay-Ellen Silbergeld article
20 that you are referring to when you say: "According to
21 published information". . .?

22 A It is the Alistair Hay articles and including it's

1 footnotes, yes.

2 MR. ROTH: I would just like to state for the
3 record that the article which has been available during the
4 three-year pendency of this litigation is not here in front
5 of the witness today. And, of course, any of his responses
6 are limited by the constraints that he doesn't have it in
7 front of him. Of course the article speaks for itself.

8 BY MR. SCHULTEN:

9 Q Look at Exhibit No. 12, please.

10 Exhibit No. 12, Mr. Montague, is that a copy of
11 your letter to Mr. Rex Carr dated April 23, 1990?

12 A It is.

13 Q And in that letter, the second paragraph of the
14 letter, Mr. Montague, I believe you state— I'll read the
15 second paragraph: "I have today written Mr. Gaffey a letter
16 asking him to clarify what he means. I don't feel I yet
17 understand exactly what he is saying. I feel I must also ask
18 you: what is the basis" — excuse me — "I feel I must also ask
19 you: what is the basis is for your remarks about Mr. Gaffey."
20 I believe I read that correctly.

21 Well, No. 1, did I read that correctly?

22 A You did. It has an extra "is" in the sentence.

1 You could take out either one and it would turn it into a
2 good sentence.

3 Q Okay. So you were asking Mr. Carr what his basis,
4 what the basis was for his statement that the Zack-Gaffey
5 study was a fraud? Is that what you were doing?

6 MR. ROTH: Object to the form.

7 BY MR. SCHULTEN:

8 Q Well, let me withdraw the question and ask it this
9 way: What were you referring to by "your remarks" in that
10 sentence? What did you mean when you wrote that? See where
11 you say "your remarks"?

12 A I believe I was referring to the section of the
13 Kemner appellate brief produced by Carr and attached to the
14 Jenkins memo of February 23rd, 1990.

15 Q So prior to your letter of April 23rd to Mr. Carr
16 you did not know what the basis of Mr. Carr's statements in
17 his appellate brief were.

18 MR. SMOGER: Objection. Misstates his testimony.
19 Argumentative.

20 THE WITNESS: My answer is that's not a true
21 statement, what you just said.

22 BY MR. SCHULTEN:

1 Q Why is that not a true statement?

2 MR. ROTH: Take your time if you want to look at
3 the memorandum and the Carr brief.

4 THE WITNESS: Would you read back the last question
5 and answer, please?

6 (Questions and answers were read:

7 "Q Well, let me withdraw the question and ask it
8 this way: What were you referring to by "your
9 remarks" in that sentence? What did you mean when
10 you wrote that? See where you say "your remarks"?

11 A I believe I was referring to the section of
12 the Kemner appellate brief produced by Carr and
13 attached to the Jenkins memo of February 23rd,
14 1990.

15 Q So, prior to your letter of April 23rd to Mr.
16 Carr you did not know what the basis of Mr. Carr's
17 statements in his appellate brief were.

18 MR. SMOGER: Objection. Misstates his
19 testimony. Argumentative.

20 THE WITNESS: My answer is that's not a true
21 statement what you just said.")

22 MR. SMOGER: Counsel will object as to overbroad

1 and calling for what he knew about his entire appellate
2 brief.

3 THE WITNESS: In my letter to Mr. Carr of April
4 23rd I was asking him for additional material, words,
5 documents, whatever he might choose to respond with that
6 would help me understand the Kemner litigation better than I
7 understood it at the time that I wrote this letter.

8 BY MR. SCHULTEN:

9 Q Did Mr. Carr provide you with a response to that
10 request?

11 A He did.

12 Q In what form did he provide you a response?

13 A A written form.

14 Q There was a letter from Mr. Carr to you?

15 A Yes.

16 Q Did he include any attachments or enclosures in
17 that letter?

18 A I believe he did.

19 Q Do you recall what they were?

20 A Exhibits, copies of exhibits, and sections of trial
21 transcript from the Kemner litigation.

22 Q Anything else?

1 A Not that I can recall at this moment.

2 Q Did you ever make any of that material that Mr.
3 Carr provided to you available to Dr. Gaffey or to Dr.
4 Gaffey's attorney, Ms. Gross?

5 A I don't know.

6 MR. ROTH: Presumably it was all available to him
7 and his attorney, inasmuch as Mr. Gaffey produced excerpts
8 from the Kemner briefs as well.

9 MR. SCHULTEN: Well, Eddie, you know, I'm trying to
10 move this thing along. If you want to testify, you know, I
11 can take your deposition, and I don't want to go in that
12 whole long spiel. I'm trying to move things along.

13 MR. ROTH: I was done. You've taken longer in
14 responding to my short comment than I did in making it.

15 MR. SCHULTEN: Well, I'm hoping to prevent further
16 comments of that nature in the future.

17 MR. ROTH: All right. Cordell, I think I've sat
18 here rather quietly during these two days.

19 MR. SCHULTEN: Let's move on. Thank you.

20 MR. ROTH: So I don't think it's an un- I think
21 it's an unfounded criticism. I think maybe we should take a
22 break, Cordell. It's 10:30. Let's take five minutes.

1 (A short break was taken.)

2 BY MR. SCHULTEN:

3 Q Back to Edition No. 171, were there preliminary
4 drafts that you prepared when you were in the process of
5 writing this article?

6 A No.

7 Q What means did you use to write the article? Was
8 it on a word processing program of a computer, or handwrittn
9 out in pencil, or what did you use?

10 A A microcomputer with word processing software.

11 Q And do you maintain the files, the computer files
12 that have the article Edition 171 either on disk or on a hard
13 drive?

14 A I'm not sure what you're asking me.

15 Q Does Edition 171, is the text of that document
16 stored in your computer files at the Foundation either on
17 disk form or hard drive or some other means?

18 A Yes.

19 Q Would it also have copies of edits that would have
20 been made to this article, changes, revisions, things of that
21 nature?

22 A No.

1 MR. SCHULTEN: The word processing program that I'm
2 familiar with that I use, if I have a version of the
3 document, and then I make edits or changes to that document
4 and then save it again with the changes, the word processing
5 program automatically has saved the original version of the
6 document too.

7 BY MR. SCHULTEN:

8 Q Does your word processing program that you were
9 using at the time that you produced Edition 171 have that
10 feature where it had saved the earlier versions of the
11 document to your knowledge?

12 A I don't remember what version of the word
13 processing software I was using in March of 1990, and so I
14 don't know the answer to your question.

15 MR. SMOGER: What system do you have that does
16 that?

17 MR. SCHULTEN: I don't really know the name of it
18 off the top of my head, but--

19 MR. ROTH: You're quite a historian, then, Cordell.
20 The Smithsonian will be grateful to have all that.

21 MR. SMOGER: Mine, unless you change the title of
22 the document, is always going to over-ride whatever was there

1 before.

2 MR. ROTH: Right. It's replaced.

3 MR. SMOGER: You have to change the name to—

4 MR. SCHULTEN: Well, our word processing department
5 comes back with version 1, version 2.

6 MR. ROTH: Oh, I see.

7 MR. SMOGER: But they have to change the name. If
8 they put a save button—

9 MR. SCHULTEN: Well, maybe they do it functionally.

10 MR. SMOGER: All they have to do is change the "1"
11 to a "2" and that will save a new document, but if the "1"
12 stays "1", it's going to erase whatever is there before.

13 BY MR. SCHULTEN:

14 Q Okay. The reason for that little discussion was
15 I'm just trying to get at the point of whether you have in
16 your computer files, your word processing files, any earlier
17 versions of edition 171?

18 A I do not.

19 Q All right. That's fine.

20 How many copies of Edition 171 were initially
21 distributed on or about March 7th of 1990?

22 MR. SMOGER: Asked and answered.

1 MR. SCHULTEN: I did?

2 MR. SMOGER: Yes, yesterday. But go ahead.

3 THE WITNESS: I know it was an interrogatory, and I
4 know the response because I looked at the interrogatories
5 before coming here. We printed a thousand; we mailed 961 or
6 962.

7 MR. SCHULTEN: Let me just have you mark this
8 Exhibit No. 13.

9 (Exhibit No. 13 [Montague] was
10 marked for identification.)

11 BY MR. SCHULTEN:

12 Q Mr. Montague, please take a look at the first page
13 of Exhibit No. 13, and could you describe for me what that
14 document is?

15 A It's a portion of a page of a ledger that we
16 maintain at our office.

17 Q And down in the lower left-hand corner I see the
18 No. 171. Do you see that?

19 A I do.

20 Q And what does that refer to?

21 A That refers to "RACHEL's Hazardous Waste News"
22 issue No. 171.

1 Q Okay. And the next number immediately to the right
2 of that is 962. Is that the number of—

3 A It's the number that we mailed.

4 Q Of that original edition of No. 171?

5 A Of No. 171.

6 MR. ROTH: Make sure he's completely finished
7 asking his question before you answer it. I think it's
8 harder for the reporter to transcribe.

9 BY MR. SCHULTEN:

10 Q Look at the second page of Exhibit 13. Actually
11 look at the second, third and fourth pages. Can you tell me
12 what's the information that's contained on those pages?

13 A It was my attempt to answer a question from Mr.
14 Gaffey's attorneys as to how many subscribers we had at the
15 time No. 171 was published in each stage and each foreign
16 country.

17 Q Okay. So, if we look at the second page of Exhibit
18 No. 13, on the very top line, "AK," is that the initials for
19 the State of Arkansas?

20 A I think it's probably Alaska. "AK" is probably
21 Alaska; "AR" is probably Arkansas.

22 Q Oh, you're right. I'm sorry. You're right. So

1 those are the initials of—

2 A And Zip code designations, the mail code
3 designations of States of the United States.

4 Q And then the number that's in parentheses
5 immediately to the right of each abbreviation, what does it
6 signify?

7 A It's the number of subscribers that I believe we
8 had as of March 7th, 1990. It's my best reconstruction of
9 the number of subscribers that we had at that time.

10 Q In the particular state that the number is next to?

11 A State or foreign country that the number is next
12 to, yes.

13 MR. ROTH: Or commonwealth.

14 MR. SCHULTEN: Right.

15 THE WITNESS: Yes.

16 MR. SMOGER: I'm just going to note for the record,
17 this document has already been produced, you have it, but—

18 MR. SCHULTEN: I didn't understand what the
19 significance of it was.

20 MR. SMOGER: It's rather apparent the document was
21 workproduct at the request of his attorneys, probably should
22 not have been revealed in discovery. But it was done by

1 attorneys before we were involved, so.

2 MR. SCHULTEN: I think it was an attachment to an
3 interrogatory answer.

4 MR. SMOGER: Oh, was it an attachment to that?

5 MR. SCHULTEN: Yes. I think that's how we got it.
6 I just wanted to know what the numbers beside the
7 abbreviations meant. But let's move on.

8 BY MR. SCHULTEN:

9 Q This is as of March the 7th, 1990, is that correct?

10 A Well, I responded to that interrogatory years after
11 March 7th, 1990, so I had to try to reconstruct the best that
12 I could what our circulation was, what our subscription list
13 looked like in 1990. So I'm not certain that it's a hundred-
14 percent accurate because it wasn't done at the time. It
15 wasn't done in March of 1990. But it's the very best that I
16 could do to reconstruct what the subscription list was as of
17 March 7th, 1990.

18 Q What documents did you refer to in order to
19 reconstruct this listing?

20 MR. ROTH: If you recall.

21 THE WITNESS: I believe there was only one
22 document, and I believe it was our computerized address list.

1 BY MR. SCHULTEN:

2 Q That is it? Okay. What information was contained
3 in that computerized address list that provides you a basis
4 to determine the dates that a particular subscriber was a
5 subscriber in March of 1990?

6 A Well, of course, there's name, address, street
7 address, city, or postal address, city, state, Zip code
8 designation. Then there is a field called date the
9 subscription started, another field called date the
10 subscription ended.

11 I think that's all the information I used in
12 reconstructing.

13 MR. SCHULTEN: Okay. Let's mark this one as
14 Exhibit No. 14, please.

15 (Exhibit No. 14 [Montague] was
16 marked for identification.)

17 BY MR. SCHULTEN:

18 Q Please take a look at the document that's been
19 handed to you and marked Exhibit No. 14, and could you tell
20 me, is that a reprint of Edition No. 171?

21 MR. ROTH: If you know.

22 MR. SMOGER: Don't guess. Just if you know.

1 (Lengthy pause.)

2 MR. SCHULTEN: Mr. Montague, I don't want to limit
3 you from rereading the entire reprint of the article, but
4 maybe I can shortcut it by asking this question instead.

5 BY MR. SCHULTEN:

6 Q At the top of Exhibit No. 14, does it state on Page
7 1 of Exhibit 14, does it state that it is a reprint of
8 Edition No. 171?

9 MR. ROTH: You want the witness just to read the
10 document that you handed him. Is that correct?

11 MR. SCHULTEN: Well, that's a preliminary question.
12 I'm going to ask him another question after that.

13 MR. ROTH: Well, just so we're clear as to that's
14 what you're asking him to do, you want the witness to read
15 what appears on the piece of paper that you handed him today
16 at the deposition.

17 BY MR. SCHULTEN:

18 Q Does it state that it's a reprint?

19 A It says "Reprint of: RACHEL's Hazardous Waste News
20 #171."

21 Q Is that a reprint that was produced by or was that
22 document produced by the Environmental Research Foundation?

1 A I'll continue reading.

2 (Pause.)

3 MR. ROTH: While he's reading, just so I understand
4 the question, do you mean was it produced to you as part of
5 this litigation?

6 MR. SCHULTEN: No, no. I mean was it reprinted by
7 the Environmental Research Foundation.

8 MR. ROTH: In other words, is that a document that
9 the Environmental Research Foundation created?

10 MR. SCHULTEN: Yes.

11 MR. ROTH: Okay.

12 (Pause.)

13 THE WITNESS: This appears to me to be an accurate
14 reprinting of No. 171 except for the mailing, the space for
15 the mailing label, and the masthead information which is
16 different.

17 BY MR. SCHULTEN:

18 Q Is that Exhibit No. 14?

19 A It is.

20 Q Is that a document that was created by the
21 Environmental Research Foundation?

22 A It appears to be.

1 Q Does the Environmental Research Foundation
2 regularly reprint editions of "RACHEL's Hazardous Waste News"
3 if copies are requested by—

4 A This is the way we store— We store the information
5 in reprint form, not in the columnized, the two-column
6 format. So if I were to look at my computer file, No. 171,
7 this is what I would get. This is the standard. So if
8 someone like Mr. Gaffey's attorney requests a copy, this is
9 what they'll get from us today.

10 Q Okay. You're referring to Exhibit No. 14.

11 A Yes.

12 Q My question then is, Mr. Montague, do you have
13 records that indicate how many copies of Edition No. 171 were
14 reprinted and distributed?

15 MR. SMOGER: Objection. Foundation. That anything
16 was distributed or that there's copies.

17 THE WITNESS: There's a computer file, and if
18 someone like an attorney for Mr. Gaffey requests a copy, we
19 will print a single copy and deliver it to them. That's what
20 I think this is.

21 BY MR. SCHULTEN:

22 Q Okay. Do you maintain records of when you may

1 receive requests for additional copies of an edition of
2 "RACHEL's Hazardous Waste News"? Do you maintain records,
3 that meaning Environmental Research Foundation, does it
4 maintain records as to who requested a reprint copy and to
5 whom a reprint copy was sent?

6 MR. ROTH: If you know.

7 THE WITNESS: Yeah. We maintain—

8 MR. ROTH: Well, if you can answer the question, do
9 you know whether you keep something like that?

10 MR. SMOGER: Let me hear the question again.

11 THE WITNESS: We keep some correspondence that
12 comes into the organization and not other correspondence.
13 That's my answer.

14 BY MR. SCHULTEN:

15 Q Okay. Does the organization maintain a list or a
16 record in any form that's created by a staff member of the
17 Foundation that says—

18 MR. ROTH: You mean like a compilation? Is that
19 what you have in mind?

20 MR. SCHULTEN: Yes.

21 BY MR. SCHULTEN:

22 Q —that says reprints of edition No., and then insert

1 the number, sent to, and then state the name, or is there a
2 record like that was created by— it would be created by the
3 staff, a member of your staff, or you or a member of your
4 staff?

5 A I do not think we maintain records like that, such
6 as you describe.

7 Q Do you have any recollection as you sit here today
8 of whether or not reprint copies such as are displayed in
9 Exhibit No. 14 were in fact distributed of Edition No. 171 to
10 anyone other than the recipients of the 962 copies of the
11 original publication?

12 MR. ROTH: Objection, form.

13 MR. SMOGER: Objection. Foundation.

14 BY MR. SCHULTEN:

15 Q Let me restate. Well, the question is, the simple
16 question is: Do you have a recollection as to whether anyone
17 has— anyone besides attorneys for Mr. Gaffey, and any
18 attorneys, do you have any recollection as to whether anyone
19 has requested reprints of Edition No. 171?

20 A Except for mailing to attorneys in this case, I am
21 not aware that we have ever mailed out additional copies of
22 No. 171 beyond the original 961 or 962, whatever that number

1 was.

2 MR. SCHULTEN: Okay. Let's mark that as Exhibit
3 No. 15, please.

4 (Exhibit No. 15 [Montague] was
5 marked for identification.)

6 BY MR. SCHULTEN:

7 Q The court reporter has handed you, Mr. Montague, a
8 document that has been marked as Montague Exhibit No. 15,
9 document that at the top has Environmental Research
10 Foundation and a P.O. Box address in Washington, D.C., a date
11 of September 3, 1991. It states, "To a few of my dioxin
12 researcher friends from Peter Montague."

13 Are those your handwritten initials on that copy?
14 (Pause.)

15 BY MR. SCHULTEN:

16 Q Do you see where your initials are at the top
17 there? The question is: Are those your initials?

18 MR. ROTH: Well, I think you should give the
19 witness an opportunity to examine the document before he's
20 asked any questions about it. Give him a few minutes and
21 he'll be responsive to your question.

22 (Witness confers with Mr. Smoger. Discussion off

1 the record.)

2 BY MR. SCHULTEN:

3 Q And is this a memorandum that you distributed on or
4 about September the 3rd of 1991?

5 A It is.

6 MR. SMOGER: Let me say something for the record.
7 I'm not all too thrilled with the production, but this is
8 something that was done obviously for his defense in this
9 case, including one of the people he sent it to is one of his
10 counsel in this case. I mean it's Mr. Merrell.

11 Others are people that were consultants and
12 potential experts with the exception of Kate Jenkins, so I
13 don't think that this is something— Maybe it was because Kate
14 Jenkins was a recipient to receive, but there's some
15 questions in this because this was done for purposes of
16 litigation clearly, and that's what it says in here.

17 MR. SCHULTEN: Well, it also went to many other
18 people, and that's what I'd like to know.

19 MR. SMOGER: No, that's not established at all.

20 MR. SCHULTEN: Well, that's what I'd like to know.
21 I want to know who did this memorandum go to. That's my
22 question.

1 BY MR. SCHULTEN:

2 Q Who are the few of your dioxin researcher friends
3 to whom--

4 A They are listed in the CC line.

5 Q That's the full extent of--

6 A That is the full extent of the circulation of that
7 memo until my attorneys produced it for you. So it's gone to
8 you.

9 Q You didn't intend for it to go to me.

10 A I was not a participant in that part of this
11 matter. My attorneys were doing it themselves.

12 Q But the individuals listed on the last two lines of
13 Exhibit No. 15 or the five individuals to whom this
14 memorandum went, and it went to no other persons except those
15 five people?

16 A That's correct.

17 Q The memorandum in paragraph 3, in paragraph 3 of
18 the memorandum, the first sentence says "I am attaching a
19 copy of the text of newsletter No. 171 so you can reread it
20 to refresh your memory about what it said."

21 A Correct. That is what it says.

22 Q Would the copy that would have been attached to

1 | this memorandum, Exhibit No. 15, have been a reprint copy—

2 | MR. ROTH: In the form of Exhibit 14?

3 | BY MR. SCHULTEN:

4 | Q —in the form of Exhibit 14?

5 | MR. ROTH: If you know.

6 | MR. SCHULTEN: If you recall.

7 | THE WITNESS: It would not have been.

8 | BY MR. SCHULTEN:

9 | Q Why would it not have been?

10 | A Reprint format of Exhibit 14 was not produced by
11 | our organization until we were located in Annapolis,
12 | Maryland, and we moved to Annapolis, Maryland on a date that
13 | I've already told you in this deposition. And it was
14 | subsequent to September 3rd, 1991, the date on Exhibit No.
15 | 15.

16 | Q Can you tell me whether or not the five individuals
17 | listed on Exhibit No. 15 were recipients of the original
18 | distribution of No. 171 on or about March the 7th of 1990?

19 | A I can tell you that.

20 | Q And what is the answer to that question?

21 | A With the exception of Kate Jenkins, they were all
22 | subscribers to the newsletter at the time that it was

1 originally mailed in the first week of March 1990?

2 Q And so is it your testimony, then, Mr. Montague,
3 that other than the 962 copies which were mailed on or about
4 March the 7th, 1990 of Edition No. 171 and the one additional
5 copy that went to Kate Jenkins on or about September the 3rd
6 of 1991, that those 963 copies comprised the total number of
7 copies of Edition 171 that Environmental Research Foundation
8 has distributed?

9 MR. ROTH: If you know.

10 THE WITNESS: That is my best recollection right
11 here right now.

12 MR. SMOGER: Well, same. You've also said with all
13 the attorneys and people involved in litigation.

14 MR. ROTH: And, of course, 171 has been appended to
15 the complaint--

16 MR. SCHULTEN: No. I'm asking what he has
17 distributed. That's what I'm asking, what he has.

18 MR. ROTH: But just for the record, 171 is on file
19 in the federal court available to anybody in the public, and
20 maybe to the libraries and elsewhere. But subject to that, I
21 just wanted to make it clear.

22 MR. SMOGER: I was saying it's not altogether--

1 There is some lack of clarity in this litigation because
2 we're all subsequent counsel. And to the extent that earlier
3 counsel were having him talk to experts and consultants, it's
4 quite possible they asked him to send material to them. And
5 that we can't judge. But as far as dissemination to the
6 outside.

7 BY MR. SCHULTEN:

8 Q Let me clarify it again just to make sure it's
9 clear. What I'm asking is copies of Edition No. 171, how
10 many copies of Edition 171 were sent to either subscribers or
11 people who subsequently contacted you and requested copies of
12 Edition 171, excluding attorneys or people who made that
13 request at the direction of attorneys?

14 MR. ROTH: And by "you" you mean Peter Montague in
15 his individual capacity.

16 MR. SCHULTEN: No, no. I mean—

17 MR. ROTH: Remember we were going break it up when
18 ERF subsequently— You know, are you asking him as Peter
19 Montague individually—

20 MR. SCHULTEN: Well, if the answer is different
21 with respect to Peter Montague individually than it is with
22 respect to the Foundation, then I'd like both answers. If

1 it's the same, that's fine.

2 MR. ROTH: So how many he sent out and how many ERF
3 may have sent out.

4 THE WITNESS: To the best of my knowledge and
5 recollection, the 1962 subscribers plus Kate Jenkins, plus
6 all the lawyers in the case, and whoever they may have asked
7 me to send it to exhausts the number of people that have
8 received No. 171 from me or from Environmental Research
9 Foundation.

10 BY MR. SCHULTEN:

11 Q That's fine. Does the computer list of subscribers
12 that you currently maintain or that the Foundation currently
13 maintains today contain the information that you described
14 before as to the date upon which their subscription started
15 and the date upon which their subscription ended? Is that
16 contained in the computer files that exist today?

17 MR. ROTH: If you know.

18 THE WITNESS: I do know the answer to that, and
19 it's a slightly complicated answer.

20 It is our policy today to never erase an address
21 record from our address data base, even though the ending
22 subscription date may have passed, that is to say, the

1 subscription may have lapsed. But I am aware that there was
2 a period of time when we were located in Washington, D.C.
3 when we had an employee who, without my knowing it, was
4 erasing old records and using the space that was thus cleared
5 in the data base to add new records.

6 And so I know that we lost names from the data base
7 as a result of subscriptions lapsing. But I have no way of
8 reconstructing what names were lost because they were
9 literally overwritten by this employee.

10 As soon as we learned that this employee was doing
11 this, we put an abrupt stop to that practice, but there's a
12 number of records that disappeared.

13 BY MR. SCHULTEN:

14 Q Do you have any understanding of how large that
15 number of records that may have disappeared as a result of
16 that employee's erasing?

17 A My guess is far fewer than a hundred, but 50— I
18 don't know.

19 MR. SMOGER: That's a guess.

20 THE WITNESS: It's a guess.

21 BY MR. SCHULTEN:

22 Q Have you ever printed a retraction of any statement

1 made in Edition No. 171?

2 A No.

3 Q Have you ever printed any correction to any
4 statement made in Edition 171?

5 MR. ROTH: Objection as to form. I don't know what
6 you mean by a "correction."

7 THE WITNESS: And I don't know what you mean by
8 "printed."

9 BY MR. SCHULTEN:

10 Q Well, okay. Printed or distributed to your
11 subscribers, any statement that indicated you were and did
12 correct some information, some statement that was made in
13 Edition No. 171?

14 MR. ROTH: Object to the form. Subject to that, if
15 you can understand the question, you can answer it.

16 THE WITNESS: I have written additional
17 newsletters. One that I can think of that described a
18 scientific study that involved some of the same exposed
19 individuals who were referred to in No. 171.

20 BY MR. SCHULTEN:

21 Q Do you recall which edition of your newsletter that
22 was?

1 A The Fingerhut study but I don't—

2 Q Pardon me. What study was it? the Maryland
3 Fingerhut study?

4 A When the Maryland Fingerhut study was published, I
5 reported that to my readers as I would typically do of an
6 important dioxin-related study. And the Fingerhut study did
7 involve some of the same individuals, and therefore was on
8 the same— loosely speaking was on the same subject matter as
9 No. 171. That's the only one that I can think of that is
10 responsive to your question.

11 Q Okay. Do you recall whether or not that edition
12 that addressed the Maryland Fingerhut study made specific
13 reference, stated and made specific reference to the Zack-
14 Gaffey study?

15 A I believe that it did not.

16 Q Just for purposes of clarity I'm going to show you
17 a document that appeared in the "New England Journal of
18 Medicine," the January 24, 1991 edition entitled "Cancer
19 Mortality in Workers Exposed to two, three, seven, eight
20 Tetrachlorodibenzo-p-dioxin."

21 A And the "p" is in italics.

22 Q Yes. Is that the Maryland Fingerhut study to which

1. you were just referring?

2. A No. (Short pause.) No, not exclusively.

3. Q There were additional studies that were—

4. A By Fingerhut.

5. Q —by Fingerhut. That were included in your comments
6. in the newsletter that you were—

7. A That were discussed in the newsletter that
8. discussed that report.

9. Q Mr. Montague, in your studies for your journalism
10. degree, in your experience in your various jobs in the field
11. of journalism, did you acquire any knowledge of libel and
12. slander laws?

13. A Some knowledge.

14. Q How did you acquire that knowledge? Did you have
15. courses in which you studied that?

16. A I do not recall specifically.

17. Q You don't recall ever having a course in journalism
18. school on—

19. A I don't recall having one or not having one. I
20. don't have a recollection of how I acquired the knowledge
21. that you asked me how I acquired.

22. Q When do you think you acquired that knowledge?

1 receive any other letters criticizing Edition No. 171 other
2 than the letters from Dr. Gaffey that we previously have
3 identified early this morning?

4 MR. SMOGER: And Monnye Gross?

5 MR. SCHULTEN: Right. And the letters from
6 attorney Gross.

7 BY MR. SCHULTEN:

8 Q Did you receive any other letters commenting upon —
9 Let me ask it that way. Let me rephrase the question.

10 Did you receive any other letters commenting upon
11 the content of Edition 171?

12 MR. ROTH: Other than letters written at the
13 request of counsel or by counsel and like that, is that
14 right?

15 MR. SCHULTEN: Let's say within the year 1990.

16 MR. SMOGER: That wouldn't do it. Did you receive
17 any other letters that weren't directly or a part of the
18 litigation as developed?

19 MR. ROTH: Threatened or otherwise.

20 THE WITNESS: No.

21 BY MR. SCHULTEN:

22 Q Mr. Montague, would you agree that the statements

1 that you make in Edition No. 171 with specific reference to
2 Dr. Gaffey and his work on the Zack-Gaffey study, would you
3 agree that those statements subject Dr. Gaffey to contempt in
4 his profession as an epidemiologist?

5 MR. SMOGER: Objection to foundation. There are no
6 specific statements made to Dr. Gaffey, so there's a flaw in
7 the question as to foundation.

8 MR. ROTH: Also object to the extent you're calling
9 on the witness to discern the emotional response of other
10 people to what they may or may not read. I think that's just
11 an impossible— It also seeks to have the witness make some
12 sort of conclusion of law.

13 If you understand the question and you feel like
14 you can answer it—

15 THE WITNESS: I do not understand the question.

16 BY MR. SCHULTEN:

17 Q Okay. Let me rephrase it. Is it your position at
18 the time that you wrote Edition 171 that the actions of
19 manipulating data in a study that Dr. Gaffey was involved in,
20 that Dr. Gaffey's involvement in manipulating of data was a
21 contemptuous— was contemptuous conduct for an epidemiologist?

22 MR. ROTH: I'm going to again object to the form of

1 the question. The witness has already talked about his
2 purposes in writing the 171, and 171, I mean, I think your
3 question mischaracterizes what is contained in "RACHEL's
4 Hazardous Waste News" No. 171. So I think it's an unfair
5 question.

6 MR. SMOGER: It's also objectionable, calling for
7 expert witness testimony as to the nature of what's
8 contemptuous conduct for an epidemiologist.

9 BY MR. SCHULTEN:

10 Q Do you have an answer for the question?

11 A I don't understand the question.

12 Q Do you think it is appropriate for an
13 epidemiologist to manipulate data in an epidemiological study
14 that he's working on?

15 MR. SMOGER: Objection. Calling for expert
16 testimony.

17 MR. ROTH: For any purpose?

18 MR. SCHULTEN: You used the word "manipulate."

19 MR. ROTH: To hide the truth.

20 BY MR. SCHULTEN:

21 Q Do you think it's appropriate for an epidemiologist
22 to manipulate data to hide the truth in an epidemiological

1 study that he is conducting?

2 MR. SMOGER: Objection. Calling for expert
3 testimony.

4 MR. ROTH: Join in the objection. Object to form
5 generally. If you can answer the question.

6 THE WITNESS: I do not think that it is-- In order
7 to respond to your question, I need to hear the question
8 again.

9 BY MR. SCHULTEN:

10 Q I'll restate it. Do you think it is appropriate
11 for an epidemiologist to manipulate data for the purpose of
12 hiding the truth in an epidemiological study that he is
13 conducting?

14 MR. SMOGER: Objection. Calling for expert
15 testimony.

16 THE WITNESS: I do not.

17 BY MR. SCHULTEN:

18 Q And so would you agree, Mr. Montague, that to
19 accuse an epidemiologist of manipulating data to hide the
20 truth in an epidemiological would subject that epidemiologist
21 whom you are accusing of that conduct to contempt?

22 MR. ROTH: Object to the question and form, and

1 MR. ROTH: Let me just interpose an objection and
2 caution the witness, to the extent that any of your knowledge
3 of libel law was obtained by counsel in this lawsuit, and
4 you're not able to discern what you learned from counsel and
5 what you may have learned independently of that, I will
6 object and ask the witness to— that the witness not respond
7 to the question. To the extent that you can sort out what
8 you knew other than from counsel in terms of what your
9 knowledge was and when you obtained it — and I know you're
10 trying to get dates and so forth, but I thought I'd make this
11 objection at an early time — then you may testify, and I'm
12 not instructing him not to answer.

13 BY MR. SCHULTEN:

14 Q Well, let me limit my question to your knowledge,
15 your understanding of libel and slander laws up to the time
16 that you published Edition 171, anything that you acquired in
17 your life up to that point in March of 1990.

18 MR. ROTH: If you're able to discern when you
19 learned that, then you may answer.

20 THE WITNESS: And what was the question?

21 BY MR. SCHULTEN:

22 Q You said you do have some understanding of libel

1 and slander laws, and I asked you when did you acquire that.
2 And I'm limiting my question to when prior to March 7th,
3 1990.

4 A I don't know the answer to that question.

5 Q Was it sometime prior to March the 7th of 1990?

6 (Slight pause.) I withdraw that question. Just let me ask
7 the question this way.

8 Did you have, the knowledge that you've testified
9 to about libel and slander laws that you've said, yes, I do
10 have some knowledge of libel and slander laws, did you have
11 that knowledge or did you have some knowledge of libel and
12 slander laws prior to March the 7th of 1990?

13 MR. SMOGER: Objection. Compound.

14 THE WITNESS: I am not able to discern from what I
15 know today about libel and slander laws, I am not able to
16 discern what I learned from whom on what dates.

17 MR. SMOGER: Let's just say that we've been giving
18 him a crash course.

19 BY MR. SCHULTEN:

20 Q Right. So is your answer to whether or not you had
21 any knowledge prior to March the 7th of 1990, is your answer
22 you don't know?

1 A My answer was and is I had some knowledge of libel
2 law.

3 Q Did you have some knowledge of libel law prior to
4 March the 7th of 1990?

5 A That's the question I just answered for you.

6 Q And your answer was?

7 A I had some knowledge.

8 Q Okay. And can you tell me what that some knowledge
9 was?

10 MR. SMOGER: Asked and answered.

11 MR. ROTH: The witness has testified that he's not
12 able to discern what he knew before March of 1990 and what he
13 has learned from counsel since then. And I want you to think
14 about that again, Peter, and take your time. If you are able
15 to sort that out, then by all means answer his question. But
16 if you're not able to sort out what you knew before and what
17 you've learned from counsel, because I think that it probably
18 has occupied more of your time with counsel than it ever did
19 before, then I'm going to instruct you not to answer the
20 question as protected by the attorney/client privilege.

21 BY MR. SCHULTEN:

22 Q Okay. If there was a question pending, I'll

1 withdraw it, and I'll ask another question. Prior to March
2 the 7th, 1990 do you recall ever attending any journalism
3 seminars or conferences or things of that nature at which
4 libel and slander laws were a part of the presentations that
5 were given?

6 A I do not today recollect having attended any
7 conferences or seminars in which libel law was the subject of
8 a presentation.

9 Q Okay. Then can you tell me, and this will be my
10 last question along this line. Can you tell me, since your
11 prior testimony has been that you did have some knowledge of
12 libel and slander laws prior to March the 7th of 1990, can
13 you tell me how you acquired that knowledge, that some
14 knowledge of libel and slander laws prior to March the 7th of
15 1990?

16 MR. ROTH: If you know.

17 MR. SMOGER: Don't guess or speculate.

18 THE WITNESS: I would just have to say my life
19 experience.

20 BY MR. SCHULTEN:

21 Q Let me ask the question this way then. Were any of
22 the newspapers that you were ever employed by at the time you

1 were employed by them, were they ever sued for libel? Do you
2 recall that?

3 A To the best of my knowledge none of the
4 organizations that I was associated with have ever been sued
5 for libel at the time that I was associated with them.

6 Q Okay. While you were an employee of any type of
7 newspaper, magazine or other type of print publication, did
8 you attend, or did you receive training, in-house training
9 regarding libel and slander laws?

10 A I don't understand the question.

11 Q Okay. I'm limiting the question to when you were
12 an employee of a newspaper or a magazine or other types of
13 journalistic media. During those periods of employment did
14 you ever receive or were you ever given training in libel and
15 slander laws?

16 A I have trouble with the word "training." I'm not
17 sure what you're talking about.

18 Q Where your employer or your superior would bring in
19 the reporter and sit them down and say, when you're writing
20 an article about one of our local people, you've got to do A,
21 B and C because we don't want to get a lawsuit against us for
22 libel? Something like that by way of example.

1 A I do not have a specific recollection of anyone
2 ever sitting me down and saying to me, giving me a speech
3 about libel law. On the other hand, I am sure that it is—

4 MR. ROTH: Well, I think that answers the question.

5 BY MR. SCHULTEN:

6 Q Yes. That's fine. So your best testimony is that
7 you acquired the some knowledge of libel and slander laws
8 prior to March the 7th of 1990 simply by your life
9 experience. Is that?

10 MR. ROTH: Whatever that knowledge is, and we're
11 unable on this record—

12 THE WITNESS: In my profession. My experience.

13 BY MR. SCHULTEN:

14 Q Your professional experience, is that correct?

15 A My life experiences is a good answer to that
16 question. My original answer to that question was my life
17 experience, and that's a good, truthful answer. That's the
18 best answer I can give you, all of my experience.

19 Q At the Environmental Research Foundation do you
20 have any manuals or other instructional materials providing
21 standards that are to be used in investigating, gathering and
22 publishing your newsletter?

1 MR. SMOGER: Objection. Relevance. And as to now
2 and whether that's received from attorneys.

3 BY MR. SCHULTEN:

4 Q I will limit the question to prior to March the 7th
5 of 1990. Did you have any manuals or other types of
6 instructional materials, I mean what I'm talking about are
7 printed materials that set forth standards that are to be
8 used in investigating, gathering and then publishing your
9 news, the articles in your newsletter?

10 A We maintain a library at Environmental Research
11 Foundation. It has several thousands volumes in it. I don't
12 know when each of them was acquired. So I don't know what
13 was in the library on March 7th, 1990, so I can't answer your
14 question.

15 Q Not telling me from what source you derived it, but
16 are there volumes in that library today that provide
17 standards for investigating and gathering news and things of
18 that nature, a journalism textbook or something of that
19 nature?

20 MR. SMOGER: Objection. Calls for a legal
21 conclusion as to what the word "standard" means, and
22 compound.

1 MR. ROTH: Just for a clarification, Cordell,
2 because I heard your question differently a few moments ago.
3 Are you asking the witness whether there is some text or
4 standard that has been adopted by the Environmental Research
5 Foundation as the standards? Because you said—

6 MR. SCHULTEN: No, no, no.

7 MR. ROTH: —newsletter. It's not clear to me
8 whether you're saying just that somebody may have written
9 something down and they keep that piece of paper, or is that
10 something that's applied by ERF? It was not clear to me.

11 MR. SCHULTEN: Okay. I'll withdraw any pending
12 question and I'll restate the question this way.

13 MR. ROTH: Okay. Go ahead.

14 BY MR. SCHULTEN:

15 Q To your knowledge, Mr. Montague, do you currently
16 have in that library at ERF a textbook on journalism?

17 A I don't know.

18 Q To your knowledge do you have in the library at ERF
19 a manual on the topic of investigating and gathering facts
20 for the purpose of writing an article in a newspaper or
21 newsletter?

22 MR. ROTH: Object to the form.

1 THE WITNESS: I believe that there are books in the
2 library on how to investigate a variety of issues or topics.

3 BY MR. SCHULTEN:

4 Q Can you tell me, do you have a recollection as you
5 sit here today what the title and who the author of any one
6 of those books might be?

7 A No, I don't.

8 Q Does Environmental Research Foundation— Withdraw
9 that question.

10 Have you attended any seminars prior to March the
11 7th of 1990 regarding the training of news reporters or news
12 editors?

13 MR. ROTH: Object to the form.

14 MR. SCHULTEN: If you understand the question, you
15 may answer.

16 THE WITNESS: Yes.

17 BY MR. SCHULTEN:

18 Q What seminars have you attended?

19 A I used to be a member of an organization called the
20 Council for the Advancement of Science Writing, and that
21 organization put on a series of workshops, as I would call
22 them, for journalists. And I was frequently a presenter at

1 those workshops on how to investigate environmental issues
2 for the purpose of writing about them or presenting them on
3 TV.

4 Q Do you recall approximately when those seminars
5 were conducted?

6 A Between the years 1984 and 1991.

7 Q In the course of your making presentations at these
8 seminars, during that time frame, did you produce any written
9 materials that were distributed to the attendees at the
10 seminars?

11 A I did.

12 Q And are those written materials contained within
13 the listing of your writings that we previously identified
14 as-- are references to those materials contained within the
15 listing of your written work which was Exhibit No. 2?

16 A I'll have to look. (Short pause.) In Exhibit No.
17 2, item No. 69 on page 8, is an example of written work of
18 the kind that you just asked me about.

19 Q Okay. Do you have a copy of that written work in
20 your possession?

21 A I assume that I do.

22 Q After you published Edition No. 171, did you

1 receive any other letters criticizing Edition No. 171 other
2 than the letters from Dr. Gaffey that we previously have
3 identified early this morning?

4 MR. SMOGER: And Monnye Gross?

5 MR. SCHULTEN: Right. And the letters from
6 attorney Gross.

7 BY MR. SCHULTEN:

8 Q Did you receive any other letters commenting upon —
9 Let me ask it that way. Let me rephrase the question.

10 Did you receive any other letters commenting upon
11 the content of Edition 171?

12 MR. ROTH: Other than letters written at the
13 request of counsel or by counsel and like that, is that
14 right?

15 MR. SCHULTEN: Let's say within the year 1990.

16 MR. SMOGER: That wouldn't do it. Did you receive
17 any other letters that weren't directly or a part of the
18 litigation as developed?

19 MR. ROTH: Threatened or otherwise.

20 THE WITNESS: No.

21 BY MR. SCHULTEN:

22 Q Mr. Montague, would you agree that the statements

1 that you make in Edition No. 171 with specific reference to
2 Dr. Gaffey and his work on the Zack-Gaffey study, would you
3 agree that those statements subject Dr. Gaffey to contempt in
4 his profession as an epidemiologist?

5 MR. SMOGER: Objection to foundation. There are no
6 specific statements made to Dr. Gaffey, so there's a flaw in
7 the question as to foundation.

8 MR. ROTH: Also object to the extent you're calling
9 on the witness to discern the emotional response of other
10 people to what they may or may not read. I think that's just
11 an impossible— It also seeks to have the witness make some
12 sort of conclusion of law.

13 If you understand the question and you feel like
14 you can answer it—

15 THE WITNESS: I do not understand the question.

16 BY MR. SCHULTEN:

17 Q Okay. Let me rephrase it. Is it your position at
18 the time that you wrote Edition 171 that the actions of
19 manipulating data in a study that Dr. Gaffey was involved in,
20 that Dr. Gaffey's involvement in manipulating of data was a
21 contemptuous— was contemptuous conduct for an epidemiologist?

22 MR. ROTH: I'm going to again object to the form of

1 the question. The witness has already talked about his
2 purposes in writing the 171, and 171, I mean, I think your
3 question mischaracterizes what is contained in "RACHEL's
4 Hazardous Waste News" No. 171. So I think it's an unfair
5 question.

6 MR. SMOGER: It's also objectionable, calling for
7 expert witness testimony as to the nature of what's
8 contemptuous conduct for an epidemiologist.

9 BY MR. SCHULTEN:

10 Q Do you have an answer for the question?

11 A I don't understand the question.

12 Q Do you think it is appropriate for an
13 epidemiologist to manipulate data in an epidemiological study
14 that he's working on?

15 MR. SMOGER: Objection. Calling for expert
16 testimony.

17 MR. ROTH: For any purpose?

18 MR. SCHULTEN: You used the word "manipulate."

19 MR. ROTH: To hide the truth.

20 BY MR. SCHULTEN:

21 Q Do you think it's appropriate for an epidemiologist
22 to manipulate data to hide the truth in an epidemiological

1 study that he is conducting?

2 MR. SMOGER: Objection. Calling for expert
3 testimony.

4 MR. ROTH: Join in the objection. Object to form
5 generally. If you can answer the question.

6 THE WITNESS: I do not think that it is— In order
7 to respond to your question, I need to hear the question
8 again.

9 BY MR. SCHULTEN:

10 Q I'll restate it. Do you think it is appropriate
11 for an epidemiologist to manipulate data for the purpose of
12 hiding the truth in an epidemiological study that he is
13 conducting?

14 MR. SMOGER: Objection. Calling for expert
15 testimony.

16 THE WITNESS: I do not.

17 BY MR. SCHULTEN:

18 Q And so would you agree, Mr. Montague, that to
19 accuse an epidemiologist of manipulating data to hide the
20 truth in an epidemiological would subject that epidemiologist
21 whom you are accusing of that conduct to contempt?

22 MR. ROTH: Object to the question and form, and

1 lack of foundation, and asking witness to opine as to what
2 may be the feelings or emotions or responses of third
3 parties. I just don't think that—

4 MR. SCHULTEN: I'm asking his opinions, not third
5 parties.

6 MR. SMOGER: Objection. Calling for expert witness
7 testimony from a lay witness, and calling for a legal
8 conclusion, as well as subjecting him to the terms of—
9 subjecting him to contempt— you're asking would he be
10 contemptuous personally?

11 BY MR. SCHULTEN:

12 Q No. Would he have that opinion of an
13 epidemiologist? Would he hold that epidemiologist in
14 contempt?

15 MR. ROTH: So you're asking him does he have an
16 opinion as to whether accusing an epidemiologist of
17 manipulating data to hide the truth would cause other people
18 to hold that epidemiologist in contempt? Is that what you—

19 MR. SCHULTEN: Would cause him to hold that
20 epidemiologist in contempt?

21 MR. ROTH: Oh, so now you're asking for his
22 personal opinion.

1 MR. SCHULTEN: That's what I said before.

2 MR. ROTH: Well, I want to make it clear. This is—

3 THE WITNESS: Would you restate the question?

4 BY MR. SCHULTEN:

5 Q Mr. Montague, would you hold an epidemiologist— You
6 have. You've known epidemiologists. You've talked to
7 epidemiologists, you're familiar with epidemiological
8 studies, you've read over a hundred epidemiological studies.
9 If one of those epidemiologists was accused of intentionally
10 manipulating data to hide the truth in the performance of an
11 epidemiological study, would you hold that epidemiologist in
12 contempt for doing such conduct, for committing such conduct?

13 MR. SMOGER: Objection. Incomplete hypothetical.

14 MR. ROTH: Objection as to form insofar as it
15 doesn't define the word "contempt." I think "contempt" can
16 mean different things to different people. You may be
17 contemptuous of me right now because I'm objecting to your
18 question, and I don't know whether that's the kind of
19 contempt that you have in mind or something else. I just
20 don't think there's any universally understood meaning of
21 contempt from context to context. So.

22 BY MR. SCHULTEN:

1 Q Well, let me rephrase it and say would he be a bad
2 epidemiologist if he intentionally manipulated data in his
3 study to hide the truth? Would he be a bad epidemiologist?

4 MR. ROTH: Objection as to form. I don't know
5 whether you're saying would he not be properly performing his
6 function as an epidemiologist, or would he be a morally bad
7 person? Again—

8 BY MR. SCHULTEN:

9 Q Would he be a bad epidemiologist?

10 MR. SMOGER: Objection. Calling for expert
11 opinion.

12 MR. ROTH: Just object to the form. If you can
13 discern what he means by bad as opposed to good, you can
14 answer, but, I mean, I think that the question could be asked
15 with more precision. I don't know that—

16 THE WITNESS: You've now asked me a whole series of
17 different questions.

18 MR. SMOGER: Just answer the last question.

19 MR. SCHULTEN: Just answer my last question that's
20 pending.

21 THE WITNESS: Would you repeat the question so that
22 I can really understand what that question is?

1 BY MR. SCHULTEN:

2 Q I appreciate your effort to be understanding. If
3 an epidemiologist, if it was said of an epidemiologist that
4 that epidemiologist intentionally manipulated data in his
5 study for the purpose of hiding the truth, would you agree
6 that that statement would mean that he is a bad
7 epidemiologist, that that's not a good thing for an
8 epidemiologist to do?

9 MR. SMOGER: Objection. Incomplete hypothetical,
10 vague and ambiguous as to who said it.

11 MR. ROTH: Join in the objection.

12 MR. SMOGER: Also calling for expert witness
13 testimony.

14 MR. ROTH: Again join.

15 THE WITNESS: I really don't understand what you're
16 asking me.

17 BY MR. SCHULTEN:

18 Q What would you think about an epidemiologist if you
19 heard that that epidemiologist intentionally manipulated data
20 in one of his studies for the purpose of hiding the truth?
21 What would you think about that epidemiologist?

22 A I would--

1 MR. ROTH: Excuse me. I'm going to ask counsel not
2 to raise his voice to the witness. This is an entirely
3 different question that you've asked heretofore.

4 MR. SCHULTEN: I appreciate that. Okay.

5 MR. ROTH: So let's just relax. And let's think
6 about, you know, listen to the question. It was given— And
7 I'm not criticizing you, Cordell.

8 MR. SCHULTEN: Fine. I understand. I appreciate
9 it. Let's proceed.

10 MR. ROTH: Do you have the question in mind, Peter?

11 THE WITNESS: The question is what would I think.
12 And what I would think would be, I would wonder whether or
13 not the accusation were true.

14 BY MR. SCHULTEN:

15 Q And if you understood the accusation to be a
16 statement of fact that this epidemiologist did, in fact,
17 manipulate data, what would you think about that
18 epidemiologist?

19 A There are several parts to that question that I do
20 not understand, so I cannot answer it in the form—

21 Q What parts don't—

22 A —in the form in which you asked it.

1 MR. SCHULTEN: In response to the interrogatories
2 that were served upon you you indicated, and I'll give you a
3 copy of it so that you have it in front of you, this is
4 Defendant's answers to Plaintiff's first interrogatories.
5 And I'm going to show you page 10. That's a complete copy of
6 your answers.

7 But page 10 there, the response to interrogatory
8 No. 7, subpart C, which is this paragraph right here.

9 (Points.) Right on page 10.

10 (Mr. Smoger confers with the witness.)

11 BY MR. SCHULTEN:

12 Q This relates to a question I asked you yesterday
13 about your prior conversations with epidemiologists. In this
14 answer you specifically state in the last sentence: "If this
15 interrogatory is being directed only to those conversations I
16 had while I was immediately in the process of writing this
17 article," this article meaning Edition 171, "then I may have
18 had conversations with Paul Connett and Tom Webster." Do you
19 see that?

20 A I do see that.

21 Q As you sit here today, do you have any recollection
22 of having a conversation with Paul Connett while you were in

1 the process of writing the article in Edition 171?

2 A I do have a recollection.

3 Q And when was that conversation?

4 MR. ROTH: Objection as to form.

5 THE WITNESS: A month or six weeks prior to
6 publication of No. 171.

7 BY MR. SCHULTEN:

8 Q So was it before you received a copy of the Jenkins
9 memorandum and attachments?

10 A It was.

11 Q Was Mr. Connett, was he at one time a professor at
12 St. Lawrence University?

13 A He is a professor at St. Lawrence University?

14 Q He still is. He's a chemistry professor, is that
15 correct?

16 A I believe that's correct.

17 Q And does he also publish, or is he involved in the
18 publication of a newsletter to your knowledge?

19 A Yes.

20 Q Has that newsletter at one time been known as or
21 called "Waste Not"?

22 A Yes.

1 Q Do you recall the contents of your conversation
2 with Paul Connett approximately a month or six weeks before
3 the publication of Edition 171?

4 A I remember some of the conversation, yes.

5 Q Do you recall whether or not you specifically
6 discussed in that conversation the Zack-Gaffey study?

7 A I do remember.

8 Q What do you recall?

9 A We did not discuss the Zack-Gaffey study.

10 Q Did you discuss any other part of the contents of
11 Edition 171, or what you were in the process of writing and
12 eventually became the article in Edition 171?

13 MR. SMOGER: Objection. Foundation.

14 MR. ROTH: Objection as to form.

15 BY MR. SCHULTEN:

16 Q I'll rephrase the question. Did you have any
17 discussion whatsoever about any topic or item that is
18 included in the Article 171 when you spoke to Mr. Connett?

19 A We talked about the Rohleder study which he gave me
20 at the time he visited my home about a month or six weeks
21 before March 7th.

22 Q But nothing about either the Zack-Gaffey study or

1 the Zack-Suskind study?

2 A It was a long conversation that went into the
3 night. And the subject of the conversation was all of the
4 studies that we were, both of us, collectively aware of,
5 animal studies, human studies of dioxin, and this paradox
6 that we were both aware of that here, the human animal was
7 not shown to be— that scientific studies seemed to show that
8 all animals besides humans that had ever been tested were
9 supremely damaged by dioxin at extremely low levels, whereas
10 humans seemed to be exempt from that.

11 And that was, on the face of it, unreasonable, and
12 we were grappling with that conundrum, why that might be.

13 Q Fair enough. Do you have a recollection as you sit
14 here today whether you specifically discussed the Zack-Gaffey
15 study in that conversation with Mr. Connett?

16 A We talked about all the, everything that we were
17 aware of in the field of dioxin literature at that time.

18 Q Okay. Listen very carefully. Here's the question.
19 Do you have a specific recollection of talking about the
20 Zack-Gaffey study in that long into-the-night conversation
21 with Paul Connett?

22 A I do not have a specific recollection of talking

1 about the Zack-Gaffey study that night with Paul Connett.

2 Q Thank you. You also make reference in your
3 interrogatory answer that you may have had a conversation
4 with Tom Webster. Do you as you sit here today have a
5 recollection in fact of having a conversation with Tom
6 Webster shortly before you published Edition 171?

7 A I do not have a specific recollection of talking to
8 Tom Webster shortly to publishing No. 171.

9 Q Okay. Do you have any recollection of talking to
10 Tom Webster— Or, what were you referring to then in your
11 interrogatory response when you said that you may have had a
12 conversation with Tom Webster? What prompted you to include
13 Mr. Webster's name in that interrogatory response?

14 A Mr. Webster was and is a dioxin researcher with
15 whom I have frequent conversations on subjects related to
16 dioxin and dioxin investigations.

17 Q Do you have a recollection of whether or not you
18 had a conversation with Mr. Webster at any time prior to
19 publishing 171 that specifically discussed the Zack-Gaffey
20 study?

21 A I had conversations with Tom Webster about all of
22 the published studies that either he knew about or I knew

1 about during the period preceding publication of No. 171. I
2 do not have a specific recollection of the name Zack and
3 Gaffey being discussed between me and Mr. Webster, but the
4 study, without naming it as the Zack-Gaffey study may well
5 have been discussed between me and Mr. Webster, as it was a
6 prominent study.

7 MR. ROTH: Is that true of your conversation with
8 Dr. Connett too?

9 THE WITNESS: It is. It was a prominent published
10 study among the Monsanto studies, and very likely would have
11 been the topic of conversation, although the name the Zack-
12 Gaffey study may never have been uttered by either one of us
13 in that conversation.

14 BY MR. SCHULTEN:

15 Q But you may have discussed the study because it was
16 a well known study. Correct?

17 A It was an important study and well known in the—
18 Yes, it was well known.

19 Q Do you recall then Mr. Webster making any comments
20 about that study, critical comments, any comments whatsoever
21 about the study?

22 MR. ROTH: Objection as to form, since there was

1 never used— by the name given.

2 MR. SCHULTEN: Well, regardless of whether it was
3 used by name, it was a well known study, and may very well
4 have been a topic of your conversation, I believe you've
5 previously testified.

6 BY MR. SCHULTEN:

7 Q And so now I'm asking whether or not you recall Mr.
8 Webster making any particular statements about the study.

9 A I do not have a specific recollection of a specific
10 statement about that specific study.

11 Q Okay. Any recollection of any general comments
12 concerning that specific study?

13 MR. ROTH: Other than the conundrum that he
14 explained to you a few minutes ago.

15 MR. SCHULTEN: Well, if it had general reference to
16 the study.

17 THE WITNESS: Well, it certainly had general
18 reference to the Monsanto studies which were prominent among
19 the few human studies that had been published. They
20 certainly formed a part of our understanding of that
21 conundrum.

22 BY MR. SCHULTEN:

1 Q Okay. How about Mr. Connett, Paul Connett, do you
2 recall any statements that he may have made with specific
3 reference, though, to the Zack-Gaffey study, while maybe not
4 referring to it by name, discussing the content of the study,
5 the conclusions of the study?

6 A I don't remember specific— I don't think I remember
7 any specific exact words from that long conversation in the
8 winter of 1990.

9 Q Do you recall whether or not you had conversations
10 with any other people besides Paul Connett or Tom Webster
11 prior to your— in the time frame, in your words, while you
12 were immediately in the process of writing the article for
13 Edition 171?

14 MR. SMOGER: About 171?

15 MR. SCHULTEN: Yes. About 171.

16 THE WITNESS: I spoke to librarians: Can you help
17 me find this article, the Zack-Gaffey study? Beyond that I
18 don't recollect any specific conversations.

19 MR. ROTH: By conversations, you mean any
20 communication at all?

21 MR. SCHULTEN: Telephone conversation, face-to-face
22 conversation, and include in that any correspondence, or

1 | electronic communication by computer.

2 | THE WITNESS: I did dial into the National Library
3 | of Medicine's computerized data base, and I did dial into one
4 | or more other commercial data bases of other technical
5 | citations to technical articles and abstracts from technical
6 | articles, and with results of those computer searches in
7 | hand, I then went to the Library and found the actual
8 | articles that formed the basis for No. 171.

9 | BY MR. SCHULTEN:

10 | Q So the purpose for dialing into the computer data
11 | bases was to get the citation information for the information
12 | that you footnote in Article 171? Is that correct?

13 | A Correct. Was to get the citation so that I could
14 | find the full article.

15 | Q Correct. Thank you.

16 | Mr. Montague, do you know whether or not there was
17 | a policy of insurance in effect in March of 1990 that
18 | provided coverage for claims against the Environmental
19 | Research Foundation or you personally for any liability, such
20 | as liability for libel or slander?

21 | MR. ROTH: I'm going to object to the question.
22 | There's an interrogatory that's pending that I have informed

1 counsel I will provide a timely answer to. I think to the
2 extent that Mr. Montague may have views as to the
3 enforceability and the applicability of—

4 MR. SCHULTEN: Well, I'm not asking for legal
5 conclusions.

6 MR. ROTH: Yes, you are. You're asking whether it
7 indemnifies him for this lawsuit, and that's a legal
8 conclusion. And that's something that is something that is
9 between he and his counsel. He's not a lawyer and you are
10 going to receive the information to which you are entitled
11 under the Federal Rules of Civil Procedure.

12 I can tell you that there is an insurance policy,
13 and the specific questions that you've asked about that in
14 interrogatory form will be answered by counsel, but not by
15 this witness sitting here right today because anything that
16 he might know about the insurance policy is something that
17 was provided to him through his counsel. And I trust that
18 Gerson will join me in that objection in instructing him not
19 to answer.

20 MR. SCHULTEN: Well, he or somebody at
21 Environmental Research Foundation acquired the coverage or
22 acquired the insurance and paid the premium to the company

1 that did it, so I'm just asking.

2 BY MR. SCHULTEN:

3 Q My question is: Did you have an insurance policy
4 for Environmental Research Foundation in March of 1990?

5 MR. SMOGER: I think that Mr. Roth's comments are
6 correct in his objection because you'll get an interrogatory
7 answer. As to personally interrogating the witness on the
8 matter is a collateral source and irrelevant and it's not
9 going to go before a jury in any case. But you'll get an
10 answer as to whether there's coverage in that, and I think
11 Mr. Roth will provide that to you.

12 MR. SCHULTEN: I'm not getting into the coverage
13 question. I'm just asking:

14 BY MR. SCHULTEN:

15 Q Did you have a policy? Were you paying premiums--

16 MR. ROTH: I will represent to you that there is an
17 insurance policy that is at issue in this lawsuit, and beyond
18 that I will provide you answers to the interrogatories that
19 you pose, and I think that probably to have it up coming this
20 week that you will have the responses that you are seeking.

21 MR. SCHULTEN: Who is the carrier?

22 MR. ROTH: I don't recall. The overall group has

1 several insurance companies under which it writes, and I
2 don't recall, sitting here right today, what it is.

3 BY MR. SCHULTEN:

4 Q Mr. Montague, do you recall?

5 MR. ROTH: I can tell you it's one of the Amerisure
6 companies, but I don't know which one.

7 BY MR. SCHULTEN:

8 Q Mr. Montague, is that your recollection, that you
9 had your insurance with Amerisure?

10 MR. ROTH: Again I— Well, if you know independently
11 of what your counsel has advised you on the subject of
12 insurance—

13 THE WITNESS: I do not know independently.

14 BY MR. SCHULTEN:

15 Q Would there be someone else at ERF who would know
16 that, such as your wife who takes care of the financial
17 matters and would pay like the insurance premiums, or would
18 have paid the insurance premiums in March? Is there someone
19 who has more knowledge about that than you do?

20 MR. SMOGER: Objection. Foundation. Assumes facts
21 not in evidence. I think it was clear that his wife was not
22 doing that at that time in March of 1990. So what her

1 knowledge is today is completely irrelevant.

2 BY MR. SCHULTEN:

3 Q The question is: Is there somebody who does know
4 it? If you don't, is there somebody else who does know it?
5 I just use that by way of example.

6 MR. ROTH: I don't think his answer was he didn't
7 know it.

8 THE WITNESS: I don't know it right here right now.
9 I could certainly get you information about our insurance
10 situation as of March 7th, 1990. I just don't happen to have
11 the name of the insurance company right here right now.

12 MR. ROTH: I don't think the 30-B-6, there was any
13 specific request for a witness knowledgeable on the subject
14 of insurance. You're going to get the response to your
15 interrogatory. If you wish to communicate with the insurance
16 company, you can write a letter to my attention, Mr.
17 Schulten, and I will pass it along to the insurance company.
18 Or you can wait a week and correspond with them directly.

19 BY MR. SCHULTEN:

20 Q All right. Mr. Montague, is the Environmental
21 Research Foundation paying your attorneys' fees?

22 MR. SMOGER: Objection. Relevance. What's that

1 relevant to?

2 MR. SCHULTEN: It's a discovery deposition.

3 MR. SMOGER: What's it relevant to? I'm asking for
4 an offer of proof.

5 MR. SCHULTEN: I think the inquiry has been made by
6 defense counsel as to whether or not-- who Plaintiff's
7 attorneys' fees are being paid for? My understanding of the
8 relevance of that is to try and develop some sort of theory
9 that this is Monsanto-motivated litigation. And so I think
10 that equal relevance would be is the defense of this
11 litigation a defense that's funded by Mr. Montague
12 personally, the Foundation, or from other sources? If it's
13 relevant with respect to the Plaintiff, then it's relevant
14 with respect to the Defendants.

15 MR. ROTH: Well, I think-- it drew an objection from
16 me.

17 MR. SMOGER: Or if we stipulate that it's
18 completely relevant, both sides, and you will allow those
19 answers of your client in full, then we'll allow Mr. Montague
20 to answer those questions as well. Can we have that
21 stipulation?

22 MR. SCHULTEN: I'm not prepared to make that

1 stipulation at this point, so I would reserve the right that
2 if we do stipulate to that in the future, then we have an
3 understanding that if we stipulate on behalf of the Plaintiff
4 as to that information, then we will be entitled to that
5 information on behalf of the Defendants.

6 MR. SMOGER: We'll provide it in response to an
7 interrogatory question.

8 MR. SCHULTEN: That's fair enough.

9 BY MR. SCHULTEN:

10 Q Mr. Montague, have you communicated with anyone,
11 any third parties, for the purpose of soliciting financial
12 support for defending the lawsuit against you?

13 MR. ROTH: Again, I think that falls into the
14 general category of who's paying for this litigation.

15 MR. SCHULTEN: No, I'm not asking that.

16 BY MR. SCHULTEN:

17 Q I'm asking whether or not he's sent out
18 communications that have solicited financial support for his
19 defense. That's what I'm asking.

20 A I have not.

21 Q You have not?

22 A I have not.

1 MR. SCHULTEN: Okay.

2 MR. ROTH: And you're asking Peter Montague in his
3 individual capacity whether he has sent something out. Is
4 that right?

5 THE WITNESS: Whether I myself have sent something
6 out.

7 BY MR. SCHULTEN:

8 Q Right. Have you on behalf of the Environmental
9 Research Foundation sent out any communication, made any
10 communication, either written or oral, to third parties
11 soliciting funds to assist in the defense of this lawsuit?

12 MR. ROTH: Again, I think this falls under the
13 general category of what we were talking about before, who's
14 paying for the lawsuit.

15 MR. SCHULTEN: I'm not asking who's paying for the
16 lawsuit.

17 MR. ROTH: Well, sure you are. You're asking--

18 MR. SCHULTEN: No. I'm asking whether he's asked
19 people, solicited funds.

20 MR. SMOGER: I have the same question and proof of
21 the relevance of this line of testimony, but you can put that
22 in your interrogatory if we enter into stipulation. But the

1 fact that he needs to pay for it, and needs money to pay for
2 it, and has had costs, could well be true, and it's certainly
3 what Mr. Gaffey probably anticipated by this lawsuit, but I
4 don't see how it's relevant. And if you're willing to give
5 all the same information to us, we will provide this to you.

6 MR. SCHULTEN: We'll again provide that— I don't
7 think an interrogatory has been directed with that particular
8 topic, but if you do, and we enter into a stipulation in the
9 future, then we have an understanding on the record here that
10 the same information will be provided on behalf of both Peter
11 Montague individually and the Environmental Research
12 Foundation. Is that correct?

13 MR. SMOGER: Yes.

14 MR. ROTH: Yes.

15 BY MR. SCHULTEN:

16 Q Okay, Mr. Montague, do you have— Excuse me. I'll
17 rephrase the question.

18 Let me show you a copy of supplemental
19 interrogatory response that was recently Faxed to me
20 responding on behalf of you, Peter Montague, individually to
21 Interrogatory No. 12. It's part of the court record.

22 My question, Mr. Montague, is, and you can refer to

1 | that if you choose to, but my question simply is: Mr.
2 | Montague, what is your personal net worth?

3 | MR. ROTH: And by that do you mean what is the
4 | value of his assets over his liabilities?

5 | MR. SCHULTEN: Yes. I mean he's listed assets,
6 | liabilities there in the answer. I'm just trying to--

7 | MR. ROTH: If you know, Peter. I mean we've also
8 | said we don't know the value of his assets and I don't think
9 | we're obligated to retain an independent appraiser to
10 | determine how much his used automobile is worth and so forth.
11 | We don't know how to characterize an interest in a pension
12 | fund, and have to hire an accountant, you know.

13 | MR. SCHULTEN: That's fine. If he has an
14 | understanding, I'd just like the answer.

15 | MR. ROTH: Do you have an understanding, Peter, of
16 | what your net worth is as that term is used, "generally
17 | accepted accounting principles"?

18 | THE WITNESS: I'm not an accountant and I don't
19 | know what those terms generally mean. Is this our answer in
20 | response to that question? (Pointing.)

21 | MR. ROTH: Oh, I think it is.

22 | MR. SMOGER: You can clarify that one comment on

1 the pension account.

2 THE WITNESS: I believe that what's written here is
3 my best answer to your question, unless I'm misunderstanding
4 your question.

5 BY MR. SCHULTEN:

6 Q Can you give me— Let me ask the question this way.
7 What clarification would you like to give to that?

8 A That the approximately \$60,000 is in a vested
9 pension account that was created during a time that I was
10 married to Katherine Montague and was living in New Jersey.
11 And it's my understanding that under New Jersey law she has a
12 valid legal claim against at least half of that.

13 Q Is that with Princeton University?

14 A Yes. So it's not all mine. That's my
15 understanding.

16 MR. SMOGER: And also it doesn't vest— You can't
17 take it.

18 THE WITNESS: I cannot take it. It's not available
19 to me in any form until I'm older.

20 BY MR. SCHULTEN:

21 Q So my follow-up question then is, Mr. Montague, do
22 you have an understanding as you sit here today as to what a

1 dollar amount would be for your net worth? And if you don't,
2 you can just simply say you don't. Taking all the
3 information that you have set forth there in your
4 interrogatory response, can you give me your best estimate or
5 best understanding as you sit here today of what your
6 personal net worth is in a dollar amount?

7 A (Reads and confers with Mr. Smoger.) It's roughly
8 \$25,000. That's my best estimate.

9 Q Fair enough. What is your annual salary from the
10 Foundation?

11 A It's around \$60,000 a year.

12 Q And do you have any other sources of income,
13 interest income, things of that nature other than your
14 salary?

15 A No, I don't.

16 Q No other sources of income other than your salary.

17 A Correct.

18 MR. SCHULTEN: Let's mark this Exhibit No. 16.

19 (Exhibit No. 16 [Montague] was
20 marked for identification.)

21 MR. SMOGER: Just to alert you, it's 22 after
22 12:00.

1 MR. SCHULTEN: I'm shooting to finish by 1:00
2 o'clock if we go straight through.

3 MR. SMOGER: We're not going to go straight
4 through. He's been going an hour and a half.

5 MR. SCHULTEN: Oh, you want to take a short break?

6 MR. SMOGER: He's going to take a short break.

7 MR. SCHULTEN: Okay. Let's take a short break and
8 let's see if we can—

9 MR. ROTH: We'll be back in five minutes. Okay.

10 MR. SCHULTEN: Okay. If you're back in five
11 minutes, we'll make every effort to try and finish by 1:00.

12 (A short break was taken.)

13 MR. SCHULTEN: Back on the record. We've marked
14 Deposition Exhibit No. 16, I believe that is what's in front
15 of you, Mr. Montague.

16 BY MR. SCHULTEN:

17 Q Is that correct?

18 A Yes.

19 Q Just for purposes of identification could you
20 please state for me whether or not this is a copy of the
21 income statement of the Environmental Research Foundation as
22 of 10-31-93, and starting on page 3 of the document a copy of

1 the balance sheet of the Environmental Research Foundation as
2 of 10-31-93? Is that what this document is?

3 A I believe that's what it is.

4 Q Okay. And are there in existence income statements
5 and balance sheets for the Environmental Research Foundation
6 for time periods in 1994?

7 A Are they in existence?

8 Q Are they in existence, yes?

9 A I believe there are.

10 Q Is this a document that is produced from the
11 computer files of the Environmental Research Foundation at
12 your offices?

13 A I believe it is.

14 Q Okay. Mr. Montague, are you aware of individuals
15 who are suing Monsanto Company and other chemical companies
16 based upon claims of harm to them arising out of exposure to
17 dioxin? Are you aware of such lawsuits?

18 MR. ROTH: Are you talking about currently pending
19 lawsuits?

20 MR. SCHULTEN: Currently pending or those that have
21 been pending over the last ten or 15 years.

22 THE WITNESS: I would say I'm generally aware of

1 some of the lawsuits that have been brought against Monsanto
2 and may be pending now against Monsanto and other chemical
3 companies.

4 BY MR. SCHULTEN:

5 Q Okay. Do you support the cause of the people who
6 are making those claims against Monsanto and those other
7 chemical companies?

8 MR. ROTH: Objection.

9 MR. SMOGER: Objection. Vague, ambiguous, object
10 as to foundation of what that cause is. And overbroad as to
11 generalizing, grouping what were or are probably hundreds of
12 thousands of different claims.

13 MR. ROTH: And also what does "support" mean? Do
14 you mean financially, do you mean morally, I mean, I don't
15 know what. I don't think the question is posed as really
16 something to answer, I don't think it's a proper question, I
17 don't think it's a fair question to ask of the witness. But
18 subject to that, if you understand it—

19 BY MR. SCHULTEN:

20 Q Well, no. Let me rephrase it. I'll rephrase it.
21 Do you believe it would be right for those people that you
22 are aware of who have such claims against Monsanto and other

1 chemical companies for injuries that they claim occurred to
2 them as a result of exposure to dioxin, do you believe it
3 would be right for those people to obtain compensation for
4 those injuries from Monsanto and other chemical companies?

5 MR. ROTH: Object to the form. If you can
6 understand—

7 MR. SMOGER: Who made the chemical that they were
8 specifically exposed to? I mean, is that what you're asking?

9 MR. SCHULTEN: Right. That they're aware of.

10 BY MR. SCHULTEN:

11 Q Of the cases that he's aware of, he's testified
12 he's aware of, do you think it would be right for them to win
13 their case?

14 MR. SMOGER: Overbroad. Incomplete hypothetical.

15 MR. ROTH: Do you have an opinion on that, Peter,
16 and do you know enough about the merits of any particular
17 case, or feel yourself competent to—

18 THE WITNESS: I'm not even being asked about any
19 particular case.

20 MR. ROTH: I know.

21 BY MR. SCHULTEN:

22 Q I'm asking you about the ones you're aware of.

1 MR. ROTH: I mean if you don't have an opinion
2 about it. You're asking for his opinion, isn't that right?

3 MR. SCHULTEN: Yes. What—

4 MR. ROTH: But he's not a judge or a juror, so I
5 guess—

6 THE WITNESS: I'm sorry. I cannot answer that
7 question because I do not understand it. I don't understand
8 what you're asking me.

9 BY MR. SCHULTEN:

10 Q Could you tell me, Mr. Montague, what organizations
11 or individuals provide grants to the Environmental Research
12 Foundation?

13 MR. ROTH: And if you want to return to the tax
14 returns because I think there's a complete disclosure of the
15 providers of grants on the tax returns that ERF produced in
16 response to Plaintiff's request for production.

17 MR. SCHULTEN: Please mark this Deposition Exhibit
18 No. 17.

19 (Exhibit No. 17 [Montague] was
20 marked for identification.)

21 MR. SMOGER: I'll go into this briefly. I have
22 some objections as to the relevance of—

1 MR. ROTH: Yes, I think so too.

2 MR. SMOGER: --who's given grants to them. Unless
3 it confirms what is suspected that the entire lawsuit on
4 behalf of the Plaintiff has "unterior" (ph.) motives.

5 MR. SCHULTEN: I'm sorry. I didn't understand the
6 last thing you said.

7 MR. SMOGER: Well, I thinking, you know, to find
8 out who is funding by grants of the ERF is completely
9 irrelevant as to how, what their source of money is. It's
10 not within the punitive damage claim.

11 BY MR. SCHULTEN:

12 Q Okay. Mr. Montague, you're being handed Exhibit
13 No. 17 which, I believe, is a copy of the Form 990 for 1992
14 for the Environmental Research Foundation. That's on the
15 first page. Is that correct? Did I correctly read that on
16 the first page?

17 A The first page of what you handed me, Exhibit No.
18 17, does say that it is a Form 990 for Environmental Research
19 Foundation 1992.

20 Q Okay. Let's turn to Schedule 4 which is toward the
21 back.

22 A I want to look at the document, please, before I

1 answer questions about it. (Reads.)

2 Yes.

3 Q Is Schedule 4 a listing of the organizations that
4 provided grants to the Environmental Research Foundation
5 during the Environmental Research Foundation's tax year 1992?

6 A I think that it is.

7 Q Did you assist in the preparation of this return?
8 Or let me withdraw that question and ask this question. Is
9 this your handwriting, your printing on Schedule 4? Is this
10 your handwriting?

11 A No.

12 Q Whose handwriting is that?

13 MR. ROTH: If you know.

14 MR. SMOGER: If you know.

15 THE WITNESS: The person who prepared it.

16 BY MR. SCHULTEN:

17 Q Do you know who the person who prepared it was?

18 A 1992.

19 MR. ROTH: If you know. Don't speculate.

20 THE WITNESS: Yes. The firm of Gehlman, Rosenberg
21 and Freedman of Bethesda, Maryland prepared this on our
22 behalf.

1 BY MR. SCHULTEN:

2 Q And it would be your understanding then that the
3 Schedule 4 that we've referred to, the handwriting on
4 Schedule 4 would be handwriting of someone at that firm, that
5 accounting firm?

6 A Yes.

7 Q Do you know, Mr. Montague, whether or not there are
8 any associations or organizations of trial attorneys,
9 plaintiffs' trial attorneys, that are subscribers to your
10 newsletter, "RACHEL's Hazardous Waste News" or what it's now
11 known by?

12 MR. SMOGER: Could I hear that question?

13 BY MR. SCHULTEN:

14 Q I'll restate it. Do you know if there are any
15 organizations of Plaintiffs' trial attorneys, such as the
16 American Trial Lawyers Association, that are subscribers to
17 "RACHEL's Hazardous Waste News"?

18 A I don't know. I don't know the names of all
19 subscribers to the newsletter, and I don't specifically know
20 about any associations of trial lawyers, was that?

21 Q That's the general way— or any legal association,
22 any association of lawyers — let's just put it in the broad

1 sense.

2 A You mean law firms?

3 Q Or individual lawyers.

4 A I know that there are individual lawyers who
5 receive the newsletter.

6 Q Okay. How about law firms that receive it?

7 A Probably, but I don't know specifically. I
8 couldn't give you the name of a law firm. Maybe your law
9 firm.

10 MR. ROTH: I subscribe.

11 MR. SMOGER: I think all his counsel subscribe.

12 MR. SCHULTEN: Or at least they do now? Do you get
13 prepublication prints?

14 MR. SMOGER: Obviously Mr. Merrell did before.

15 MR. SCHULTEN: Right.

16 MR. ROTH: No. We review it for the interest in
17 environmental affairs.

18 BY MR. SCHULTEN:

19 Q Okay. Mr. Montague, do you consider your personal
20 reputation as a journalist to be important to you?

21 MR. ROTH: I would object to the form of the
22 question. "Reputation" in what sense? what community?

1 Reputation around the law department, IBM, or survivalist in
2 North Dakota, or who?

3 MR. SMOGER: Objection.

4 MR. ROTH: I think that's overbroad. If you can
5 answer the question.

6 THE WITNESS: I agree with you. I'm not able to
7 answer the question because I don't understand what you're
8 asking me about.

9 BY MR. SCHULTEN:

10 Q Is what people think about you as a journalist and
11 as the editor of the Environmental Research Foundation's
12 newsletter, is what people think about you in that capacity,
13 is that important to you?

14 MR. SMOGER: Objection. Overbroad. Which people?

15 MR. SCHULTEN: People who are aware of you and
16 aware of your position as the editor of the newsletter, your
17 subscribers.

18 MR. SMOGER: Objection. So you're limiting that to
19 what his subscribers think of him?

20 BY MR. SCHULTEN:

21 Q Let's limit it to that to begin with. Is what your
22 subscribers think about you, your reputation for reliability

1 as a journalist, is that important to you?

2 A Yes.

3 Q Why is that important?

4 A For numerous reasons.

5 Q Give me one reason why it's important to you.

6 A Because our goal is to get reliable information
7 into the hands of people who need it in a form in which they
8 can understand the information. And our credibility is
9 important in that process of conveying information to people.

10 Q Okay. Is there another reason why your reputation
11 is important, the reputation of your newsletter is important?

12 MR. SMOGER: Objection. Overbroad.

13 MR. ROTH: Which one do you want to know?

14 MR. SMOGER: You just went beyond his subscribers,
15 and he was talking about his subscribers.

16 MR. SCHULTEN: Well, we're talking about the
17 subscribers too. He said there are numerous reasons, and I
18 asked him give me one, which he has, and I appreciate that.
19 Now I'm asking, give me another.

20 MR. ROTH: I think he's given several. Go ahead.
21 But others that come to mind.

22 MR. SCHULTEN: If there are others that come to

1 mind.

2 THE WITNESS: We rely upon our subscribers, not
3 exclusively, but partially rely upon our subscribers to send
4 us information that they believe we need to know. And if
5 they did not think highly of us, they would cease sending us
6 that information, and that would hurt our ability to learn
7 about what's important to our readers, and to thus serve
8 their needs.

9 BY MR. SCHULTEN:

10 Q Mr. Montague, are you personally associated with,
11 or is the Environmental Research Foundation associated with
12 the Environmental Defense Fund?

13 MR. ROTH: Object to the form of the question.—

14 MR. SMOGER: Ambiguous, associated with—

15 MR. ROTH: (Speaking simultaneously.) —association.

16 BY MR. SCHULTEN:

17 Q Okay. Are you, Peter Montague, personally a member
18 of the Environmental Defense Fund?

19 A I am not.

20 Q Is ERF a member of the Environmental Defense Fund?

21 A No.

22 Q Have you ever participated as a presenter in a

1 conference or discussion or seminar which was sponsored by
2 the Environmental Defense Fund, in whole or in part?

3 A Yes.

4 Q Would that be what you have previously described
5 to me yesterday as, for example, the first and second
6 citizens conferences on dioxin?

7 A That was not what I had in mind when I said yes.

8 Q Okay. What did you have in mind when you said yes?

9 A First thing that comes to mind is a conference put
10 on by, I think it was put on by the Environmental Defense
11 Fund, and perhaps other organizations as well in the State of
12 New Jersey in roughly 1983 or 1984. And I participated in
13 their conference.

14 Q As a presenter?

15 A I didn't know that's what you had asked me.

16 Q Okay. That's a second, that's a follow-up
17 question. Did you participate as just an attendee or—

18 A At that instance that I just described I believe I
19 was an attendee and not a presenter.

20 Q Have you ever been a presenter at any conference or
21 seminar or other type of function sponsored in whole or in
22 part by the Environmental Defense Fund?

1 A Not that I recollect at this moment, no.

2 Q Okay. Mr. Montague, do you have knowledge of Dr.
3 William Gaffey's reputation as an epidemiologist?

4 MR. SMOGER: Objection. Foundation.

5 MR. SCHULTEN: I'm asking him if he has knowledge.
6 That's a foundation question.

7 MR. SMOGER: Whether he has any reputation at all.
8 But go ahead.

9 THE WITNESS: I don't understand the question.
10 Knowledge of Mr. Gaffey's reputation?

11 BY MR. SCHULTEN:

12 Q Have you talked to other people, in these
13 discussions with these other epidemiologists, have you
14 discussed with them whether or not Dr. William Gaffey is a
15 good epidemiologist, or a reliable epidemiologist, or in some
16 other way tried to characterize his reliability as an
17 epidemiologist?

18 MR. ROTH: To the extent — I would object to the
19 extent that the question calls for the witness to relate
20 information that was conveyed to him by consultants or others
21 designated as experts in this case. I think it's protected
22 by the attorney workproduct protection, as well as the

1 attorney/client privilege. And other than that—

2 MR. SMOGER: Join and compound.

3 MR. ROTH: —if you have an opinion or other
4 expressed opinion as to Mr. Gaffey's reputation.

5 THE WITNESS: Outside of my relationship with my
6 attorneys in this case and the individuals that they have
7 suggested that I contact within the confines of this case, I
8 do not have knowledge of Mr. Gaffey's reputation as an
9 epidemiologist.

10 BY MR. SCHULTEN:

11 Q That's fine. Independent of this litigation and
12 your discussions with attorneys and consultants in this
13 litigation, independent of this, do you have knowledge of the
14 reputation of Judith Zack?

15 A I do not.

16 Q How about Raymond Suskind, again same question,
17 independent of this litigation, and just based upon your
18 discussions with numerous epidemiologists and the reading of
19 over hundreds of epidemiological studies and your ongoing
20 discussions regarding the paradox between the occurrence of
21 cancers in laboratory animals, and the apparent nonoccurrence
22 of cancers in humans when both groups were exposed to dioxin

1 and those ongoing discussions of that paradox, have you
2 through that gained any knowledge of the reputation of Dr.
3 Raymond Suskind?

4 MR. ROTH: I object to the preamble.

5 MR. SMOGER: Object. It's compound. You're
6 actually asking a different question. Now you're asking is
7 his whole knowledge of all these studies and what's going on
8 in dioxin, does that impact on how he views those studies and
9 the authors of the studies? rather than saying whether he has
10 any knowledge of the general reputation of Raymond Suskind as
11 an individual. Which one of those questions are you asking
12 now?

13 MR. SCHULTEN: I'm asking the last question I just
14 posed.

15 MR. SMOGER: Do you have any knowledge of Raymond
16 Suskind as an individual?

17 MR. ROTH: Reputation.

18 MR. SMOGER: Or his reputation.

19 MR. ROTH: Outside the confines of this lawsuit.

20 MR. SCHULTEN: Right.

21 THE WITNESS: In the conversation that I described
22 to you earlier with Paul Connett and Tom Webster regarding

1 this peculiar circumstance that human studies weren't showing
2 what animal studies had shown--

3 BY MR. SCHULTEN:

4 Q Did Raymond Suskind's name come up?

5 A I don't know whether the name came up, but the
6 Monsanto studies were well known as contributing
7 significantly to this conundrum. And there were-- One
8 wondered how that might have occurred.

9 Q Do you have an opinion about the reputation of
10 Monsanto Company?

11 A With whom?

12 MR. SMOGER: Objection. Overbroad.

13 BY MR. SCHULTEN:

14 Q With you. Do you have an opinion about Monsanto
15 Company? Is Monsanto a responsible company?

16 MR. SMOGER: Objection. Overbroad.

17 MR. ROTH: Object to the form.

18 MR. SMOGER: Are you talking about their carpets?
19 There's a whole lot to what Monsanto Company is.

20 BY MR. SCHULTEN:

21 Q Let's talk about it specifically in terms of with
22 respect to these studies that you have general knowledge of

1 that contributed to the conundrum.

2 MR. ROTH: Again, to the extent that he's gained
3 information in the context of this litigation—

4 MR. SCHULTEN: I think he's sufficiently been
5 advised of that, but if you want to repeat that again, it's
6 fine.

7 MR. ROTH: Do you form opinions as to reputations
8 of individual companies like Monsanto?

9 THE WITNESS: I have opinions about behavior.

10 BY MR. SCHULTEN:

11 Q What are those opinions?

12 MR. ROTH: Well, let him finish.

13 MR. SCHULTEN: Oh, excuse me. I'm sorry. I
14 thought he was finished.

15 THE WITNESS: By individuals and groups of
16 individuals.

17 BY MR. SCHULTEN:

18 Q Okay. What are those opinions of behavior?

19 A It depends on the circumstance.

20 Q Well, give me— I'm talking about the circumstances
21 of the Monsanto studies, and your knowledge of the Monsanto
22 studies, do you have an opinion about the— I believe you used

1 the phrase the conduct, conduct of behavior of individuals or
2 groups of individuals. What is that?

3 MR. ROTH: And I'm going to advise the witness that
4 to the extent that he's able to discern what his opinions and
5 views and information is independently of what his
6 discussions have been with counsel and expert consultants and
7 witnesses, if you can discern what those views are
8 independent of what you've learned in those circumstances, by
9 all means give the testimony. If you can't, I would instruct
10 you not to answer because it would be the product of
11 privileged communications between—

12 BY MR. SCHULTEN:

13 Q I'm not asking for anything that some attorneys
14 have told you at all. I'm asking for your, based upon what
15 we've talked about before and what you described to me
16 before, these ongoing dialogues with your epidemiologist
17 friends about the conundrum.

18 A I would have to say that my opinion about the
19 Monsanto Company's behavior related to the matters that are
20 the subject of these studies is very heavily colored by my
21 participation in this lawsuit, and I would not be able to
22 discern opinions that were not gathered or were not formed as

1 a result of my participation in this lawsuit.

2 Q I'm not going to mark this as an exhibit, but just
3 for purposes of clarification, there were some documents
4 produced to us by your attorneys, and one of those documents
5 I'm going to show you a copy of. It appears to be the
6 concluding page of a letter. I have been unable to find any
7 other pages that appear to comprise that letter. And if you
8 can look at that letter, Mr. Montague, look at that page and
9 tell me what, if you can by just looking at that, what that
10 page relates to, what letter it relates to, I would like you
11 to do that.

12 MR. ROTH: If you know.

13 MR. SCHULTEN: If you know. And off the record.

14 (Discussion off the record.)

15 MR. ROTH: Do you know what that is?

16 THE WITNESS: I don't.

17 MR. ROTH: I will represent to you that I will go
18 back and look at the files that were produced. I have the
19 universe of paper from Mr. Montague's files relating to the
20 production that occurred before we were counsel in the case,
21 and I will see if I can find what the-- maybe that that was
22 just an odd piece of paper. We don't know what it is. If

1 | there is a first page, we'll see if we can find it. If it's
2 | responsive, we'll just take it up with you then.

3 | MR. SCHULTEN: Why don't you take that. That's an
4 | extra copy.

5 | MR. ROTH: Oh, it is. Okay. That's great.

6 | MR. SCHULTEN: You just take that and see if you
7 | can follow up on that for me. I'd appreciate it.

8 | MR. ROTH: Sure.

9 | BY MR. SCHULTEN:

10 | Q One question I forgot to ask you yesterday, Mr.
11 | Montague. You said that one of the sources of the Jenkins
12 | memo was Margo Blackwell, I believe. Is that correct? One
13 | of the people that you got the Jenkins memo from was Margo
14 | Blackwell.

15 | A Yes.

16 | Q Do you recall whether or not you had any
17 | conversations with Ms. Blackwell prior to your writing the
18 | article that appeared in Edition 171?

19 | A I do recall.

20 | Q What do you recall?

21 | A I did not have a conversation with her.

22 | MR. SCHULTEN: I believe that's all the questions

1 that I have.

2 MR. ROTH: Okay. We are going to review and read
3 the deposition. I'd like you to note for the record that
4 it's five minutes past 1:00 on this day. That concludes this
5 deposition. Thank you very much.

6 (Whereupon, 1:05 o'clock p.m., the deposition was
7 concluded. Signature was not waived.)

8 * * *

CERTIFICATE OF THE WITNESS

I, PETER GUNN MONTAGUE, do hereby certify
 that the foregoing contains a full, complete and accurate
 transcript of the testimony given by me at my deposition
 taken the 21st day of October, 1994, except for
 corrections, if any, made by me and duly noted herein:

Page	Line	As Transcribed	Change to:

 Date Signed

 Signature of the Deponent

UNITED STATES OF AMERICA)
DISTRICT OF COLUMBIA)

I, Margaret Sue Foster, the officer before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn by me; that the testimony of said witness was taken by me by Stenomask and thereafter reduced to typewriting by me; that said deposition is a true record of the testimony given by said witness; that I am neither counsel for, related to nor employed by any of the parties to the action in which this deposition was taken; and, further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, or financially or otherwise interested in the outcome of this action.


Margaret Sue Foster,

Notary Public in and for the
District of Columbia

My Commission expires:
July 31, 1996