

1 time--at the time you examined them, that's what I asked you.

2 A Yes, I have some quarrel with that.

3 Q And how many could you--I say, there are 23, how
4 many do you say had such complaints?

5 A I thought that the significant number would
6 probably--

7 MR. CARR: Your Honor, the witness keeps adding
8 significance, he knows that I am not wanting him to interpret
9 whether they are significant or not. He knows that what I am
10 asking him to do is simply to count the ones that have these
11 complaints.

12 A Then 23 is the count.

13 Q Thank you, Doctor. And, Doctor, those 23 persons
14 could be signs of nerve damage, could they not, sir?

15 A They might.

16 Q And, Doctor, you told the people at Monsanto that
17 there was no sign of such nerve damage, did you not, in this
18 meeting of 1956 before you went into the Commission?

19 A As I indicated, that's inaccurate, sir. I
20 couldn't have said that.

21 Q Well, you couldn't have said it because it was in
22 error.

23 A Not in error.

24 Q We got into this, Doctor. It was a large number
25 of people that had such evidence of nerve damage, isn't that

1 right, sir?

2 A No, I didn't think it was a large number, and I
3 didn't say what Mr. Weger puts in his minutes, which I didn't
4 know about until 1983, sir. I have no knowledge of this,
5 these minutes or its accuracy.

6 Q Doctor, my question is, sir, do you consider ten
7 a large number out of 36, even on the ones that you thought
8 were significant?

9 A It all depends upon the severity, sir.

10 Q Doctor, you were the one that said you found ten
11 significant, therefore, do you consider ten a large number?

12 A Not really. Not if they're mild.

13 Q Now, Doctor, you didn't say that. You're
14 changing again.

15 A He didn't quote me, sir.

16 Q You picked out, there were 23 that had these
17 complaints.

18 A He didn't quote me, sir.

19 Q Excuse me, Doctor, there were 23 that had these
20 complaints, isn't that correct, sir?

21 A That's what your record shows.

22 MR. CARR: Your Honor--

23 A Yes.

24 Q And it isn't my record, is it, Doctor? It is
25 your record that shows that, isn't that correct, Doctor? It

1 is your record that shows that. I didn't prepare the 1953
2 report, did I, sir?

3 A It is your interpretation of my record, sir.

4 Q Excuse me, Doctor. It is your interpretation of
5 your records as well, is it not, sir?

6 A No--

7 Q That 23 had complaints of pain in the legs, the
8 back, and so forth. That's what you interpreted as well, did
9 you not, sir?

10 A No, sir.

11 Q Well, please read it and interpret, please.
12 Count the ones that you say had complaints of pain in the
13 legs, the arms, the muscles, the back, and so forth. Please
14 do that, sir. Please interpret the record for us by counting
15 the number of complaints in that regard.

16 A You have counted 23, and that's how it reads in
17 the record.

18 Q And so therefore that is your count also, isn't
19 it, sir?

20 A No, it is not my count.

21 Q Then make it your count. No, I want you to make
22 it your count, sir. I want you to interpret these records,
23 Doctor, so there is no messing around, so you don't have to
24 say this is my interpretation.

25 A There were probably ten significant complaints.

1 Q I didn't ask you for that, sir. There are ten
2 that you consider significant, but I want you to interpret
3 your records for us and state if you will by interpreting
4 your records the number of people that had complaints of
5 aches and pains in the legs, the arms, the back, the
6 shoulders, and so forth. Give us your benefit of your
7 interpretation, sir.

8 A Your 23 will stand.

9 Q Not my 23, Doctor. I want it to be your 23. It
10 is your 23, isn't it, sir? It is the way you--

11 A That's how it reads in the record.

12 Q That's how you interpret what the records say,
13 isn't that correct, sir?

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

15 Q Is the word yes attributable, responsive to my
16 question? That's how you interpret the records, correct,
17 sir?

18 A That's how you interpret the records, sir.

19 Q Doctor, then I want you to go through and
20 interpret the records, because I don't want you to be saying
21 that it is my interpretation. I want it to be your
22 interpretation. Please go through the records and interpret
23 for us the number of men that made these complaints.

24 A I don't think there is any need to, because we
25 did that yesterday.

1 Q Yes, we did, and it was your interpretation
2 yesterday as well, wasn't it, sir?

3 A I went along with your criteria.

4 Q I don't want you to go along with me, I want you
5 to interpret the records yourself for yourself for this Jury
6 so you don't have to tell me any more that it is mine.

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

8 Q Is it your interpretation of the record, sir?

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

10 MR. CARR: Would you direct the witness to answer
11 my question, your Honor?

12 THE COURT: Doctor, that was not in response to
13 the question. Answer the question.

14 A It is.

15 Q So you are not going to tell me any more that it
16 is my interpretation, you agree it is your interpretation,
17 don't you, sir?

18 A I don't agree, no.

19 Q Is it your interpretation, sir, of the records or
20 not that 23 men had these complaints of pain and so forth?

21 A I say that's how the record reads.

22 Q I know, Doctor. But what I want you to say is
23 that it is your interpretation or that it is not your
24 interpretation. Is that how you interpret these records,
25 that 23 men complained of aches and pains in the legs and the

1 muscles, the calves, and so forth, sir.

2 A In order to save time, I'll say yes.

3 Q No, Doctor, not in order to save time, I won't
4 accept it on that basis. I'll only accept it on the basis if
5 it is indeed your interpretation, so you won't throw it at me
6 any more that it is my interpretation, because I want it to
7 be your interpretation.

8 A I'm talking about significant complaints and this
9 is not significant.

10 Q Doctor, I'm not asking you about significance at
11 this time.

12 A Well, that's what I am interested in, sir.

13 Q Now, Doctor, I submit to you that what you are
14 interested in is not necessarily what I am required to ask
15 you. My obligation to my client is to ask questions that I
16 consider important to my client and not necessarily important
17 to you, so would you please answer my question? Is it your
18 interpretation of the records that these 23 men had
19 complaints of pain and aches in the muscles, the legs, the
20 back, arms, shoulders, neck, and so forth, sir?

21 A Yes.

22 Q And, Doctor, you considered that in ten of those
23 cases it was significant, is that correct, sir?

24 A About ten.

25 Q And, Doctor, you considered it significant why?

1 A Because I would regard their complaints as
2 being, knowing the individuals that they were accurate in
3 their complaints, and I am not sure the others were.

4 Q Now, Doctor, just because--

5 A Also, sir, if I can finish the sentence.

6 Q Well, sure, go ahead.

7 A Everybody at some time or other has aches and
8 pains, and in this examination there were any number of
9 people who were anxious to demonstrate that they were
10 affected by the exposure and some of them indeed were. So
11 that the number of complaints about aches and pains was
12 really much more than they really were.

13 Q All right, Doctor. Go through the records,
14 please, and tell us how many of these people were anxious to
15 exaggerate their complaints.

16 A I can't tell you, it is my overall opinion.

17 Q Doctor, if you would listen to me, please, I'd
18 like for you to go through the records and your report from
19 1953 and tell us how many of these men in your judgment from
20 the records you have there were anxious to exaggerate their
21 complaints.

22 A I can't do that at the moment, sir.

23 Q Well, please do it, sir.

24 A I have no way of doing it, sir.

25 Q Doctor, you have the record in front of you. You

1 have the only records that you--

2 A It is my clinical judgment.

3 Q Excuse me, Doctor. If you would allow me to

4 finish my question, sir, you have no record of your

5 examination of these men other than this exhibit, isn't that

6 correct, sir?

7 A We probably have the original records, yes.

8 Q Have you looked at those original records

9 recently, Doctor?

10 A No, sir, I haven't looked at them since 1953.

11 Q Doctor, is it fair that the only records that you

12 have that you can use to come to the conclusion that there

13 were a number of men that exaggerated their complaints or

14 weren't truthful or didn't have them, you have this record

15 here, have you not, sir?

16 A No, I do not.

17 Q Well, you have it in front of you, you have your

18 original report, don't you, sir?

19 A Yes, sir.

20 Q Please look at that original report and tell us

21 based upon that report how many of these men in your judgment

22 and the judgment of your examiners at that time exaggerated

23 their complaints, sir.

24 A Well, if there are 23 there, there must have

25 been--

1 Q Doctor, I'm asking you not to speculate, but I'm
2 asking you to look at your record and give us this number.
3 You said a large number were doing this. I want to know--

4 A This is an overall--

5 Q I know that, Doctor.

6 A --opinion, sir, and I can't give you--I am unable
7 to give you case by case--

8 Q Well, Doctor, go through the records, please, and
9 tell us from these records and from these records which ones
10 were exaggerated.

11 A I cannot do that, sir.

12 Q Please do it, sir. Look, first of all, at
13 Frank--I'm sorry, Mr. Roy Shank, please, sir. Is there
14 anything in the record that you have regard Mr. Shank to
15 suggest that he is exaggerating, lying, not telling the truth
16 about his aches and pains?

17 A No, but I don't think these are significant,
18 these are not significant pains.

19 Q Doctor--

20 MR. CARR: Your Honor, could you direct the
21 witness again to wait until I ask the question and once he's
22 answered to let me ask another one?

23 THE COURT: Doctor--

24 THE WITNESS: Yes, sir.

25 Q Doctor, based upon the records that you have here

1 that we have the only records that were given us, would you
2 please state whether or not there is anything in the record
3 to indicate that Mr. Shank is exaggerating any of his
4 complaints or problems or that he is lying and not telling
5 the truth?

6 A None of these people were lying, sir.

7 Q All right. That's a step forward. They were all
8 telling what they thought was the truth.

9 A Probably.

10 Q Well, now, Doctor, make up your mind. It can't
11 be probably and it can't be none are lying. Was it
12 your judgment at that time, and is it your judgment now that
13 none of these men were lying?

14 A I don't believe that they were lying, not
15 intentionally, sir.

16 Q All right. It is your judgment that they were
17 telling the truth as they saw it?

18 A I believe so.

19 Q All right. Now, if they were having aches and
20 pains, they were telling the truth. If they said they had
21 aches and pains, they were telling what you consider to be
22 the truth, isn't that correct, sir?

23 A I would assume so.

24 Q Now, Doctor, I don't want you to assume so. You
25 just got through telling us that in your judgment they were

1 all telling the truth. It was based upon your assessment of
2 the people, their personalities, their character, the kind of
3 men they were at work, and all the other things doctors use
4 to determine whether or not someone is telling the truth.
5 Now, it is your judgment that none of these men were lying,
6 isn't that correct?

7 A That's true, sir.

8 Q And they were all telling the truth?

9 A I believe so.

10 Q All right. Now, Doctor, did Mr. Shank exaggerate
11 his complaints in your judgment?

12 A Probably not.

13 Q Doctor, exaggeration, a knowing exaggeration is
14 the same thing as a lie, isn't it, sir?

15 A Not necessarily, no, sir.

16 Q Doctor, a knowing exaggeration, if I tell you
17 that I know that I am five foot seven and if I tell you that
18 I am five foot eight or nine, that's an exaggeration of my
19 height, isn't it, sir?

20 A Yes.

21 Q And if I tell you, knowing that I am five foot
22 seven that I am five foot eight, that's a lie, isn't it, sir?

23 A If it is willful.

24 Q It doesn't have to be willful, a lie is a lie is
25 a lie.

1 A It could be an error.

2 Q Yes, it could be. But if I exaggerate it is not

3 an error.

4 A It could be an error, sir.

5 Q An exaggeration can be an error?

6 A Sure.

7 Q How so, Doctor?

8 A That's what I said, sir.

9 Q But my question is, how so?

10 A An exaggeration could be an error.

11 Q Sir?

12 A An exaggeration could be an error.

13 Q An exaggeration could be an error?

14 A Yes.

15 Q Now, Doctor, an exaggeration just like a lie is a

16 deliberate thing, isn't it, sir? If you lie accidentally, it

17 is not a lie, is it, sir, because a lie by definition is

18 something that you say on purpose, isn't that right, sir,

19 knowing it not to be the truth, isn't that correct?

20 A I believe so.

21 Q Now, Doctor, did Mr. Shank exaggerate his

22 complaints in your judgment?

23 A He might have, yes.

24 Q Now, a moment ago, you said probably not in your

25 judgment. But now you're saying he might have, yes. Now,

1 Doctor, do you understand?

2 A Based upon your--

3 Q Excuse me, Dr. Suskind. Do you understand that

4 those are two contradictory statements you made in the past

5 two minutes, do you understand that, sir?

6 A No, sir.

7 Q Doctor, you don't understand that a moment ago

8 you said, two moments ago you said Mr. Shank was probably not

9 exaggerating, and now you say he might have, yes, been

10 exaggerating.

11 A Sure, that's possible.

12 Q Doctor, anything is possible. I'm asking you in

13 your judgment was Mr. Shank exaggerating?

14 A Probably not.

15 Q Thank you, Doctor. Frank Milam, was he

16 exaggerating in his complaints?

17 A He didn't have any pain.

18 Q Doctor, could you answer my question, please,

19 sir?

20 A No.

21 Q Would you please answer my question, sir?

22 A You asked whether he was exaggerating, no, he

23 wasn't.

24 Q Was Frank Milam exaggerating in his complaints?

25 A No.

1 Q Was Ralph Westphall exaggerating in his
2 complaints?
3 A About his pains, yes, he might have been.
4 Q Is the answer yes, he was exaggerating?
5 A He might, yes.
6 Q And Jessie Steele, was he exaggerating?
7 A No.
8 Q John Selby, was he exaggerating?
9 A No.
10 Q Paul Willard, was he exaggerating?
11 A Yes, sir.
12 Q What is there in the record, sir, that suggests
13 to you that he was exaggerating?
14 A Well, knowing Paul Willard for the length of time
15 I did, and having examined him many times, he was an
16 exaggerater.
17 Q Well, Doctor, what you are saying now is based
18 upon examinations you made as recently as 1979 is that you
19 now concluded that Mr. Willard was an exaggerater, is that
20 correct, sir?
21 A Not based upon this examination and the one in
22 '56.
23 Q The one in '56 at the hearing, sir?
24 A Yes, sir.
25 Q Did you describe any complaints about Mr. Willard

1 at this hearing, sir?

2 A He continued to complain at the hearing.

3 Q Doctor, did you describe him as an exaggerater

4 there?

5 A I believe so.

6 Q Doctor, if you turn to Page 96, do you not say

7 there, sir, "I would say that the aches and pains were

8 there"?

9 A I believe we are talking about '53 there, sir.

10 Q That's what we're talking about, Doctor. Exactly

11 what we're talking about, whether or not these complaints in

12 1953 were real or exaggerated.

13 A Not in the case of Mr. Willard, sir.

14 Q Doctor, did you not say in 1956 that his

15 complaints were real, that they were there?

16 A We lumped them together, sir.

17 Q Yes, Doctor.

18 A They asked a general question and I said they

19 were probably real, but we didn't single out--

20 Q You didn't say they were probably real, you said

21 they were real, did you not, sir?

22 A Yes, sir.

23 Q And you didn't use the word probably at all, did

24 you, sir?

25 A That's right, sir.

1 Q And you meant to describe Mr. Willard's pains as
2 well, did you not, sir?

3 A No, sir.

4 Q Did you point that out, sir, to anybody?

5 A No, sir.

6 Q You described his pains as real in '56 following
7 your examination of him in '56, did you not, sir?

8 A Can you find that for me, sir?

9 Q What we just discussed, sir, Page 96.

10 A Ninety-six discusses the '53 group, sir.

11 Q That's right, Doctor.

12 A I'm talking about '56--

13 Q No, Doctor, we are talking about the report in
14 1953 where you said Mr. Willard was exaggerating his
15 complaints.

16 A That's right.

17 Q But in 1956, with regard to that report, you did
18 not say he was exaggerating his complaints, did you, sir?

19 A I didn't single Mr. Willard out, sir.

20 Q Could you answer my question, Doctor?

21 A No, sir.

22 Q Is the answer to my question that you did not
23 report Mr. Willard as an exaggerater in 1956?

24 A As of 1953, we lumped him with the others, but--

25 Q Doctor, could you answer my question, please?

1 A What is the question, sir?

2 MR. CARR: Could you read the question to him,
3 please?

4 (The previous question, "Is the answer
5 to my question yes, that you did not
6 report Mr. Willard as an exaggerater
7 in 1956?" was read by the reporter.)

8 A That's true, sir.

9 Q And you also describe to the Commission in 1956
10 following your examination of Mr. Willard that he had
11 symptoms of aches and pains and nervousness that were
12 moderate, did you not, sir?

13 A What page is that, sir?

14 Q Ninety-five, bottom of page ninety-four and top
15 of page ninety-five.

16 A We were not talking about '56 at that point, sir,
17 we were talking about '53.

18 Q That's correct, Doctor, we are talking about
19 1953, you asked me about what did you find in Mr. Willard in
20 1956.

21 Q No, my question was what did you report in 1956
22 about your 1953 exam after you had been examining the man in
23 1956 because you have told us, Doctor, that you concluded in
24 1956 that his 1953 report, complaints were exaggerated. You
25 based that upon what you said was an examination that took

1 place in 1956 prior to the compensation hearing, isn't that
2 correct, Doctor?

3 A That's true, sir.

4 Q But now, in 1956 at the compensation hearing you
5 make no mention that Mr. Willard was an exaggerater in 1953,
6 do you, sir?

7 A But we--

8 Q Excuse me, sir, could you answer that question,
9 please, sir?

10 A No, but in the '53 report--

11 Q Doctor, please limit yourself to the question I'm
12 asking. You have cited as evidence that Mr. Willard was an
13 exaggerater, that you made that decision in 1956 referable to
14 his 1953 complaints because of your 1956 exam, and now
15 following your 1956 exam, Dr. Suskind, you made no mention
16 that Mr. Willard was an exaggerater in 1953, did you, sir?

17 A On Page 46, there is a description of Mr.
18 Willard.

19 Q Yes, yes, go ahead, Doctor. I'm on Page 46.

20 A And we indicated that--

21 Q Where do you indicate what, sir?

22 A He is an unstable person who has made a very poor
23 psychological adjustment to his original illness.

24 Q You say that on Page 46?

25 A Page 46 of the '53 report.

1 Q Oh, of the '53 report?

2 A Right, I'm talking about the '53, right.

3 Q Doctor, we are off again. You said in '56 that
4 you concluded that he was an exaggerater, but, Doctor, in
5 '56, where in the '56 record do you conclude he is an
6 exaggerater?

7 A I believe on Page 113, we said that we examined
8 two out of three of the men from the '49-'50 episode, and one
9 man of whom we had no objective findings, except that he was
10 very tense and this was Paul Willard, was concerned not with
11 his acne, not with his liver, but was concerned with the fact
12 that his doctor told him he had heart disease which was
13 incurable, and this man I recorded and put into record as
14 iatrogenic, which means doctor causes heart disease from
15 which the man has recovered.

16 Q And, Doctor, where did you say that is an
17 exaggerater? According to the way I read, you found him to
18 be a very tense person, and he is concerned about the fact
19 that his doctor told him he had heart disease which was
20 incurable, and you said in fact that the doctor caused his
21 heart disease, from which he recovered. I don't read that as
22 a statement in '56 that Paul Willard was an exaggerater.

23 A In my judgment, sir, he was an exaggerater as
24 well.

25 Q I know you said that, Doctor, but I want to see

1 where you said that in 1956, because what you said in '56 is
2 a man that's scared to death. He's got an incurable heart
3 disease, that's what you said in '56.

4 A Which he didn't have, sir.

5 Q Which he didn't have according to what you said.
6 But my question is, Doctor, wherein does that say that he is
7 an exaggerater?

8 A Well, we questioned his--

9 Q Doctor, could you tell me wherein that says--

10 A We questioned his complaints, sir.

11 Q Doctor, where did you question his complaints?
12 Where do you say you question his complaints?

13 A We don't have it here in this report, sir.

14 Q Then you do not put in the 1956 compensation
15 hearing any statement whatsoever that Paul Willard is an
16 exaggerater, is that correct?

17 A That's true, sir.

18 Q So when you told us earlier that your conclusion
19 that he was an exaggerater was based upon your 1956
20 examination, that was an error also?

21 A No, sir, it wasn't an error. We didn't have an
22 opportunity to talk about Mr. Willard in that hearing, except
23 one occasion.

24 Q Now, Doctor--

25 A But I can remember that examination.

1 Q Doctor, there is a number of places you talked
2 about Mr. Willard. You talked about him on Page 94 and 95.
3 You talked about him on Page 113, you just pointed out. You
4 talked about him at Page 25, you talked about him at Page,
5 well, there are at least three places, four places there you
6 talked about Mr. Willard. Now, my question to you, sir, is
7 where did you say in these records that he was an
8 exaggerater?

9 A We did not, sir.

10 Q Thank you, Doctor. Now, in 1953, you said here
11 that Page 46 suggests to you or states to you that he is an
12 exaggerater. Doctor, what you have reported here in 1946 is
13 that he is a person that's very scared, you call him
14 unstable. He made a poor psychological adjustment to his
15 original illness, and you say there is a serious possibility
16 that his heart disease is iatrogenic rather than organic, do
17 you not, sir?

18 A No, sir.

19 Q Report in 1953, on Page 46, isn't that correct,
20 sir?

21 A Yes, sir.

22 Q Now, Doctor, you also say there, "Mr. Willard
23 requires careful rehabilitation. He needs to regain
24 confidence in his own physical well-being and productive
25 ability. Psychiatric help is definitely indicated. In

1 addition he should be studied clinically with an eye to
2 thyroid disease and examined repeatedly to clarify his
3 cardiac status. It is recommended that he return to work,
4 but receive psychiatric treatment and guidance to assist in
5 the rehabilitation." Do you see that, sir?

6 A I do.

7 Q Now, Doctor, this was in a man that had no
8 problems of this sort prior to, so far as you know, prior to
9 the exposure to the dioxin in 1949 and 1950, isn't that
10 correct, sir?

11 A I don't know, sir.

12 Q I said so far as you know, Dr. Suskind.

13 A Yes.

14 Q Now, Doctor, where is the evidence that Mr.
15 Willard was an exaggerater?

16 A In my memory, sir.

17 Q Now, Doctor, your memory can fail, because it is
18 some thirty years ago, some thirty-three years ago, his
19 examination in 1953. Could you point out the record to us
20 where you consider him to be an exaggerater?

21 A It isn't in the record, but one doesn't put those
22 things in the record, sir.

23 Q Oh, yes, one does, sir.

24 A No, sir.

25 Q If they are making a claim for workmen's

1 compensation, and you believe the man is exaggerating
2 complaints, it is your obligation appearing on behalf of
3 Monsanto to point that out, is it not, sir?

4 A No, sir.

5 Q It is not your obligation as an expert if you
6 believe the man is exaggerating and he is trying to get
7 compensation and you have an expert opinion that he is not
8 telling the facts?

9 A Not necessarily to put it in the record.

10 Q Doctor, you know that if a person comes forward
11 with a claim that he can't support, that he might get
12 workmen's compensation to which he is not entitled, isn't that
13 correct, sir?

14 A Would you repeat the question, sir?

15 Q You know that if a man puts forth claims that are
16 not true, that are exaggerated, that he might get
17 compensation from Monsanto to which he is not entitled, you
18 know that, don't you, sir?

19 A It might be, sir.

20 Q All right, Doctor. And you made no mention at
21 any time in any of these records that Mr. Willard was an
22 exaggerater, did you, sir?

23 A That's true.

24 Q Sir?

25 A Yes.

1 Q And Doctor, who else did you consider in 1953--
2 THE COURT: Before we get into someone else, is
3 this a good point for a break?

4 MR. CARR: Yes.

5 THE COURT: We will take a short break at this
6 time. The admonishments that I have given you earlier will
7 apply during this break also. The Court is in recess.

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

9 BY MR. CARR:

10 Q Dr. Suskind, we had just finished Paul Willard.
11 The next worker, Lonnie Hurley, was he exaggerating his
12 complaints, sir, in 1953?

13 A Yes.

14 Q And what in the report supports your statement,
15 sir, that he exaggerated his complaints?

16 A When I originally described my view of the
17 complaints of pain, I was talking about my interpretation of
18 the significant, the significant finding, the significant
19 complaints, including exaggeration. Exaggeration is not the
20 only factor in this.

21 Q Now, Doctor, what in the report, perhaps you
22 misunderstood my question or perhaps you weren't listening.
23 What in your 1953 report supports that Mr. Hurley was an
24 exaggerater?

25 A None, but I indicated that exaggeration is only

1 one of the factors, sir.

2 Q Doctor, I understand that. But what you said to
3 this Jury was that any of these men have exaggerated their
4 complaints of aches and pains and nerves in their legs and
5 their arms and their shoulders, that's what you told us. And
6 Lonnie Hurley has not exaggerated his aches or pains or
7 complaints, has he, sir?

8 A I believe that he may have, yes.

9 Q And where is the record that supports your
10 belief, sir?

11 A As I indicated, we didn't include it in that.

12 Q Doctor, please direct me to the report. You have
13 no independent memory.

14 A Sir, I'm concerned with the significant
15 complaints of pain.

16 Q You didn't tell the Jury that it was significant
17 complaints. You told the Jury today before the recess that
18 many of these men didn't tell their complaints truthfully,
19 and exaggerated their complaints.

20 A That was one of the things.

21 Q I know that's one of the things that we are
22 examining right now, Dr. Suskind. If you don't mind, let me
23 finish my questions, please, sir. I want to explore and have
24 you support if you can the statement that you told the Jury
25 that many of these workers at Nitro either did not tell the

1 truth or exaggerated their complaints of aches and pains
2 relative to their legs, arms, shoulders, back, feet, or
3 whatever the pains and aches may have been related to. Now,
4 would you please show me first of all, tell me the page
5 number of the 1953 report which supports your statement that
6 Mr. Hurly is an exaggerater.

7 A It isn't in here, sir.

8 Q There is nothing in this report to suggest to you
9 that he exaggerated his complaints of leg pains that he had
10 in 1953, is there, sir?

11 A There is none in this report, but in my
12 judgment--

13 Q Sir, is there any record that you know of where
14 you made the statement that Mr. Hurley exaggerated his
15 complaints in 1953?

16 A I don't believe so.

17 Q Doctor, as a matter of fact, Mr. Hurley told you
18 in 1953 that he felt he had improved steadily, did he not,
19 sir?

20 A He did, sir.

21 Q Now, Doctor, doesn't a worker that tells you that
22 he believes he has improved steadily, isn't that the exact
23 opposite of an exaggerater?

24 A Not necessarily.

25 Q Now, Doctor, would you want to explain that? How

1 somebody can tell you they've improved steadily? He had,
2 originally, he had developed pains in the calf muscles, he
3 complained of painful twitching of these muscles, especially
4 at night, developed nervousness, generalized weakness and
5 fatigue, and then in 1953 you say, "Mr. Hurley feels he has
6 improved steadily and at the present time his complaints
7 consist of a skin eruption on the face, mild fatigue which
8 increases on exertion, together with nervousness and
9 occasional leg pains." Now, Doctor, is a man that tells you
10 he has an occasional leg pain exaggerating that he is
11 improving steadily, is that your definition of an
12 exaggerater?

13 A That is no definition at all.

14 Q Is that how you describe somebody that you
15 consider to be an exaggerater?

16 A He could still be exaggerating the pains.

17 Q Excuse me, Doctor. Is that how you describe
18 somebody to be an exaggerater, where he tells you that he has
19 improved so steadily that he now only has occasional leg
20 pains?

21 A He could still be exaggerating.

22 Q He could still be exaggerating? Indeed, he still
23 could be. I want to know if there is any way you can make
24 the judgment other than sheer speculation. Anybody can be
25 exaggerating just as you can be exaggerating in the testimony

1 in this case, and wherever you do, I attempt to point out
2 records that show you are exaggerating and not being
3 accurate.

4 MR. HEINEMAN: May counsel approach the bench?

5 (The following conference was
6 held at the bench.)

7 MR. HEINEMAN: We have yet another improper Jury
8 speech that I object to. I ask that it be stricken. I ask
9 that the Jury be instructed to disregard it. It is improper.
10 Mr. Carr knows it. Everybody knows it. I object to it.

11 THE COURT: What's the rest of your question?

12 MR. CARR: I want to know where in the record is
13 there something that supports his claim that this man is an
14 exaggerater; that he knows from the course of this trial
15 where people do exaggerate, and there is evidence to show
16 that he does exaggerate. You can point it out. You can show
17 it as I have done with him because the man is feigning
18 ignorance on this point. He is not ignorant on this point.
19 He is feigning ignorance in order to get away with a
20 statement that was made earlier.

21 MR. HEINEMAN: May I make a further record on it,
22 your Honor? I am happy to have Mr. Carr's views on that
23 subject. The fact of the matter is that he is not entitled
24 to make a speech to the Jury about this witness exaggerating
25 and then being caught in it by him. That's not a question,

1 that's not a proper statement, and I move that it be
2 stricken.

3 THE COURT: The record indicates that the
4 objection came in the middle of the question before argument,
5 actually, there was some argument. But I ask the rest of the
6 question be completed so I can see the contents of the
7 statements within the total question. It was not a Jury
8 speech, it is a proper question. It was objected to, it was
9 properly illustrative. It happens to be supported by the
10 record. Your objection is overruled. Let's go.

11 (The following proceedings were
12 held in open Court.)

13 BY MR. CARR:

14 Q Now, Doctor, you know that that is the way that
15 it's done in your experience in this case. Now, if you
16 would, sir, point out to me where in this record there is
17 anything to support even a speculation that Mr. Hurley was
18 exaggerating.

19 A My recollection, my best recollection--

20 MR. CARR: Your Honor, would you direct the
21 witness to answer the question as I posed it?

22 THE COURT: Doctor, you heard the question.
23 Please answer the question as directed. I believe it was
24 directed to the records.

25 A It is not in the records, sir.

1 Q Okay. Doctor, Barry Hudnall, would you read the
2 record, sir, and tell us whether or not you consider Mr.
3 Hudnall an exaggerater?

4 A Yes, I do, sir.

5 Q And there is something in the record to support
6 what you say in the instance of Mr. Hudnall, isn't there?

7 A Yes, there is, sir.

8 Q And as a matter of fact, good physicians point
9 out where they believe a person is exaggerating, don't they,
10 sir?

11 A They might.

12 Q Well, they should, should they not, Doctor, if
13 they want to present to the employer, to their employer, that
14 is the Monsanto Chemical Company, the scientific, medically
15 sound judgment that these examining teams have with regard to
16 the people that they are looking at, they should point out,
17 should they not, where they believe somebody is exaggerating?

18 A If it is very evident, sir.

19 Q If they have that judgment, they should point it
20 out, shouldn't they, sir, if that is their judgment?

21 A They should.

22 Q And Doctor, it is in the case of Barry Hudnall
23 that they pointed out, and only in the case of Barry Hudnall
24 that it was pointed out in this report that the man was an
25 exaggerater, isn't that correct, sir?