

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT
ST. CLAIR COUNTY, ILLINOIS

FRANCES E. KEMNER, ET AL.,)
Plaintiffs,)
v.) Case No. 80-L-970
MONSANTO COMPANY,)
Defendant.)

REPORT OF PROCEEDINGS

March 10, 1986

Before the HONORABLE RICHARD P. GOLDENKERSH, CIRCUIT JUDGE

APPEARANCES:

MR. REX CARR and MR. JEROME SEIGFREID, Attorneys at
Law, on Behalf of the Plaintiffs; and

MR. KENNETH HEINEMAN, MR. JOSEPH NASSIF, and MR. JAMES
C. CRAVEN, Attorneys at Law, on Behalf of the
Defendant.

Kathleen Watson Brunsmann, RPR, CSR

Official Court Reporter

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1 BE IT REMEMBERED AND CERTIFIED, that heretofore on
2 to-wit: Monday, March 10, 1986 the matter as hereinbefore
3 set forth came on for hearing before the Honorable Richard
4 P. Goldenhersh, Circuit Judge, in and for the Twentieth
5 Judicial Circuit, and the following was had of record, to-
6 wit:

7
8 (The following proceedings were had in chambers
9 out of the presence and hearing of the jury:)

10
11 MR. HEINEMAN: Ready? Judge, we're here this
12 morning to suggest to the Court that there needs to be some
13 sort of a limitation with respect to the time that Mr. Carr
14 is taking to cross examine the present witness, and an
15 exercise of the Court's discretion in that regard. What Mr.
16 Carr is going into right now, that he started right at the
17 end of the day on Friday, is clearly repetitious of
18 information that he went through earlier with this witness,
19 and we believe that it's done in an effort to be pure
20 harassment of the witness.

21 As the Court will recall, we covered in direct
22 examination the area of the 1953 study in an hour or two.
23 Mr. Carr has now been examining this witness with respect to
24 that study for about six days, which is about three times

1 the total of the direct examination.

2 The Court will recall, of course, that it had
3 exercised its discretion to limit the Defendant in the
4 course of the cross examination of Dr. Carnow.

5 So, essentially, Judge, the witness has been
6 involved in testimony for about a month. There have been at
7 least five or six lost days of testimony which have not been
8 his fault, three days were at his request. There have been
9 several days of testimony lost which have not been through
10 his fault.

11 These 11 people that Mr. Carr is starting to go
12 over with this exhibit, with the typewritten exhibit with
13 the doctor's handwriting on it, which is 1734, I believe,
14 has been gone over at length before with the doctor, and we
15 believe it's repetitious, and we object to it.

16 In addition, your Honor, we would like to say on
17 the witness' behalf that Mr. Carr has been intentionally
18 baiting this witness. He says things like that he
19 disbelieves the witness, improper statements such that he
20 would not trust the recollection of this witness, which is
21 as I understand it, the very same thing that Dr. Carnow said
22 about this witness in Nitro, which is what Mr. Carr
23 represented to this Court as being reprehensible, and as
24 justifying the outbreak that this witness had about Dr.

1 Carnow, and yet Mr. Carr has employed the same tactics, and
2 when this witness comes back with an emotional outburst or
3 responses that are emotional in nature, and spontaneous in
4 response to the baiting and encourages this witness'
5 reaction, and then it brings adverse Court reaction to what
6 the witness has done.

7 So we object to the intentional baiting of this
8 witness and the harassment of him by Mr. Carr, and we would
9 ask the Court and Mr. Carr for a statement of how long this
10 cross examination is going to go. It's now about three
11 times the length of the direct. There was a time when Mr.
12 Carr told the Court that he thought he could probably finish
13 by the 28th of February. Of course, we missed that entire
14 week, so obviously that's out the window.

15 THE COURT: Unfortunately so.

16 MR. HEINEMAN: But since we're six days and we're
17 not even passed the 1953 examination, or study, I think we
18 would need and would request some representation from Mr.
19 Carr as to how long this thing is going to go.

20 THE COURT: You referred to what he said in Nitro.
21 I don't know what he said in Nitro.

22 MR. HEINEMAN: Well, Mr. Carr --

23 THE COURT: I remember what happened here. But
24 what he said was not repeated. If you're going to say that

1 it's the same, I need to know exactly what is said.

2 MR. HEINEMAN: My understanding is he called the
3 doctor a liar. Carnow called Dr. Suskind a liar, said that
4 Suskind lied to the Worker's Compensation Commission. I
5 don't recall anything more reprehensible than that being
6 said about Dr. Suskind. Mr. Carr has done exactly the same
7 thing in the courtroom, even though it's something that he
8 suggested to the Court would excuse the emotional outburst
9 that the witness made in connection with Dr. Carnow.

10 Therefore --

11 THE COURT: I'm not asking you to reargue, I
12 didn't know what had been said.

13 MR. HEINEMAN: All right. That's essentially our
14 position.

15 THE COURT: Since you had said it was equivalent,
16 I needed to know what it was.

17 MR. CARR: Your Honor, that isn't what I had in
18 mind that I considered to be reprehensible on the part of
19 Dr. Carnow. There is no question but what -- and it was Stu
20 Caldwell that said and pointed out in the Nitro hearing that
21 Dr. Suskind lied before the Compensation Commission. There
22 is no question about that. He has acknowledged, in effect,
23 that same thing here.

24 The reprehensible statement on the part of Dr.

1 Carnow was not that. It was a statement that Dr. Carnow
2 believed that Dr. Suskind was responsible for the loss of
3 hundreds and thousands of lives because of his statements
4 and publications about the lack of toxicity of dioxin. That
5 was what I considered reprehensible. I still consider it
6 reprehensible, and I believe that the embittered feelings
7 that Dr. Suskind has with regard to Dr. Carnow would be
8 justified because of that statement.

9 Dr. Suskind is a liar. There's no question about
10 that. He has been found in this courtroom to have lied on a
11 number of occasions. In the same breath he says one thing
12 and then immediately thereafter says a diametrically
13 opposite thing, with the two statements he simply says
14 they're not inconsistent. Yes is equivalent to no.

15 The length of time that has been taken, your
16 Honor, because of the -- has been because of this witness'
17 open flaunting of the Court's orders with respect to
18 responsiveness of questions, and with respect to this
19 witness practically by the minute requiring reestablishment
20 of points already established. I believe I've had to
21 establish at least ten times that the checkmarks on
22 Plaintiff's Exhibit 1730 are the result of interpretations
23 of Dr. Suskind's statement. He constantly goes back and
24 says no, that's your interpretation, and then I have to

1 reestablish time and time again that it is his
2 interpretation.

3 With respect to the length of time that's required
4 with going over Exhibit 1701, Plaintiff's Exhibit 1701 is the
5 1953 examination and report, which this witness has
6 interpreted for us and then changes his interpretation. I
7 had in my schedule of cross examination not more than a half
8 a minute to be devoted on this last go-around, the
9 connection of these symptoms in 1953 and in 1979. I
10 believed that the witness would say yes they had these
11 symptoms in 1953, and yes, they had these symptoms in 1979,
12 and, therefore, the symptoms had not all gone away as was
13 stated in the AMA 1981 report, and in the 1984 summary. He
14 surprised me when he said no, they weren't symptoms there in
15 1979. I asked what -- well, the Court knows what I asked.

16 Then I had to go in and reestablish that they were
17 symptoms in each case. After reestablishing that they were
18 symptoms in each case, he then goes on to say well, they're
19 not really symptoms, they're imaginary symptoms they had in
20 1979. Then I'm required to go in and prove that they're not
21 imaginary, all of which takes place because this witness
22 evades the question, evades the logical response to the
23 question, and then when forced to give a logical response to
24 the question, the truthful response, five minutes later,

1 sometimes even two minutes later, he changes and says he
2 didn't say it. The only way you can cross examine a witness
3 of this ilk is to continue and to persevere and to
4 reestablish with each time the point that had been
5 established before.

6 Insofar as the limit is concerned, if the Court
7 were to establish a limit of time with this kind of witness,
8 then the Court would guarantee that the truth would not come
9 out, because this witness is extraordinarily adept at making
10 broad, general statements, and then passing on without
11 anything to back it up, except his stature as a scientist,
12 and then when one gets into examining the foundation of the
13 broad, general statement, one finds that it's decayed and
14 termite eaten. There's only one way to examine that kind of
15 witness and that is to go in with the specifics, and to show
16 that he has no specifics to back up the broad, general,
17 sweeping statement that he made.

18 With respect to Dr. Carnow and Dr. Silbergeld, the
19 Court will recall, the Court gave unlimited time when they
20 came on with their toxicological expertise, and Counsel
21 spent weeks in cross examining these expert witnesses on the
22 toxicological effects of TCDD, without limit, I might say,
23 without any limitation whatsoever.

24 Dr. Suskind is the chief witness of Monsanto. He

1 is the one responsible for the misapprehension in the world
2 as to the terrible effects of TCDD, and this is the only
3 form in which it can be established that he has lied to the
4 world and lied to this jury on direct examination. The only
5 way to demonstrate that with a man like Dr. Suskind is the
6 way that I'm doing it.

7 THE COURT: Any reply?

8 MR. HEINEMAN: Yes. Your Honor, the witness has
9 clearly not flaunted the Court's instructions. The witness
10 is trying his very best to abide by this Court's
11 instructions, and has emotional outbursts that the Court has
12 objected to and has instructed him to discontinue. It is
13 the questioning, the method of questioning of Mr. Carr, the
14 intentional confusion of complaints versus symptoms by Mr.
15 Carr which have elicited the kinds of answers that he's
16 gotten from this witness, and in some instances the
17 emotional outbursts that he's received in response.

18 So it is not to be laid in our view at this
19 witness's doorstep. It is something that Mr. Carr is
20 carrying on intentionally in an effort to get this witness
21 in a contrary posture with the Court, which this witness
22 really seeks to avoid. The witness has told this Court that
23 he is trying his best to answer these questions as best he
24 can, as a scientist, and as we have pointed out to the Court

1 previously, the context within which he was permitted to
2 testify in the Charleston, West Virginia case is very
3 different from the context here. This is very frustrating
4 for him. It's very difficult. He's doing the best he can.

5 THE COURT: Well, a couple of things. First of
6 all, I've stated before, and I will state again, there is no
7 question that this witness is flaunting this Court's
8 instructions. He has said he's trying to comply, he, in
9 fact, has not. I think his behavior on the witness stand
10 has shown that, and I think the examples that I gave Friday
11 when we talked about this illustrated perfectly.

12 I would like nothing better than to limit what all
13 of you people are doing as far as time is concerned. The
14 problem is the way this witness refuses to answer questions,
15 there is no way that I can make a reasonable calculation as
16 to how much longer the rest of the cross examination can
17 take. If he, in fact, were answering questions the way
18 these questions should be answered, I think I would have a
19 basis to make some sort of general calculation as to how
20 long the rest of the cross examination would take. I would
21 be in a position to have a reasonable basis upon which to
22 determine a limit as you've requested that I do.
23 Unfortunately the behavior of this witness in this courtroom
24 makes any estimate, any reasonable estimate of how long a

1 given topic would take to cover in cross examination
2 virtually impossible.

3 So with the behavior of this witness in the
4 courtroom, I don't think that it is possible to establish a
5 reasonable limitation as to a time limitation, which I
6 understand is what you're asking for of how long something
7 should take. I wish that weren't so, because -- well, it
8 shouldn't be so. But having sat through all of the cross
9 examination, of course, and having seen what has happened, I
10 don't think that there is a person in this room on the basis
11 of the way this testimony has gone or not gone who can make
12 a reasonable estimate as to how long the rest of it should
13 take, assuming that all of the important matters that were
14 covered on direct were to be covered in cross examination.

15 So if his behavior changes, then I would be happy
16 to reconsider it. But at this point in time, with this
17 witness' behavior, I don't think that it is possible to be
18 done.

19 Do you have any idea how long you'll take?

20 MR. CARR: No, Judge. I have a number of points
21 to go over with this witness. This point that we're going
22 over was a point that I anticipated in covering in a
23 morning. It's now taken, because of this witness -- well,
24 I've already said -- no, I have no idea, because I have a

1 number of, at least ten, fifteen points yet to cover with
2 this witness, and the subject that we're on is just one
3 point. Now, admittedly this is divided up into segments
4 because there's a number of men to be examined, and the
5 other points won't be that involved or technical.

6 No, I can't give a judgment. I wish I could. I
7 had no idea this man would be this way.

8 THE COURT: You know, if his behavior changes and
9 he actually starts answering questions, then at that point
10 in time, whatever that point is in the cross examination,
11 I'll reconsider your motion. But at this point in time
12 there's no way in the world to reasonably calculate how long
13 cross examination of this witness should take, and I'm not
14 going to walk into that morass.

15 As I repeated before, talk to him again, get him
16 to conform his behavior to the rules, and if he does so,
17 then I will be happy to reconsider this. However, at the
18 present time I don't think that it's possible to reasonably
19 figure how long it would possibly take.

20 MR. CARR: Your Honor, on this point, Counsel
21 suggested that I've baited the witness by telling him I
22 don't believe him, and I'd like to have a short -- I'd like
23 to make a short response to that. The Court will recall I
24 asked the witness a number of times, my question said what

documents are there in existence to support this view. He said his recollection is in existence. I said no, I'm talking about your documents, what documents are there, and then he for a half a dozen different times, he says my recollection. He knew and knows that I'm referring to documents, and yet he insists on talking about his recollection. It required me to tell him that I could not test his recollection by cross examination or by comparing it to a document. I simply would not take it. There was an outburst at the end in which he accused me of twisting the facts or misinterpreting the facts, which was uncalled for and required responses. No, I don't want any outbursts from this man, contrary I want to get through with this cross examination of him at the earliest possible time. I have absolutely no intention of baiting him. I thought I treated him with consideration throughout, much more consideration than he's entitled to in my judgment. But anyway, I wanted that response, I have not baited him, and would not bait him, and --

MR. HEINEMAN: I think the record will demonstrate that.

THE COURT: Okay. That's it.

1 (The following proceedings were had in the
2 presence of the jury:)

3
4 THE COURT: Good morning. Mr. Carr.

5
6 DR. RAYMOND SUSKIND,

7
8 having previously been sworn upon his oath,
9 testified further as follows:

10
11 FURTHER CROSS EXAMINATION

12 BY MR. CARR:

13 Q Dr. Suskind, Friday we were discussing the past
14 medical, pre-1979 medical of Mr. Charles Farley. I'd like
15 to hand you all of the, up to and including 1979 medical
16 records that Monsanto has given us relating to Charles
17 Farley.

18 A Thank you.

19 Q And in the course of the questioning Friday you
20 suggested that Mr. Farley's complaints as were related to
21 you in '79 were imaginary. Do you recall that, sir?

22 A No, sir.

23 Q Sorry?

24 A No, sir.

1 Q You don't recall that we went through the '79
2 records of Mr. Charles Farley, that you said he had this
3 depression state, and in your judgment the other complaints
4 that he made relative to pain and the nervous system and so
5 forth were imaginary?

6 A No, sir.

7 Q You don't recall that at all, Dr. Suskind?

8 A I do recall what I said, sir.

9 Q And you don't recall describing his complaints as
10 imaginary?

11 A No.

12 Q Or his symptoms as imaginary?

13 A No.

14 Q Dr. Suskind, you recall we were testing the
15 statement of the AMA in which it was said in their summary
16 that the symptoms have always cleared with time. Do you
17 recall that, sir?

18 A Yes, I believe I do.

19 Q And do you recall with respect to Mr. Farley, he
20 had in 1979 dizziness, memory changes, fatigue, sleepiness,
21 depression, pains in muscles and joints? Do you recall
22 that, sir, that we went through that and your report in '79
23 said that he currently had those particular problems, and he
24 dated the muscle pain and the joint pain from 1949?

1 A I would have to look at his chart to recall it,
2 sir.

3 Q It's Exhibit 1733. Do you have it there, sir?

4 A No, I do not, sir.

5 Q Would you give him Plaintiff's Exhibit 1733.

6 Probably in this stack here since we were using it. It is
7 here.

8 A Thank you.

9 Q Doctor, if you turn to page 17 of Exhibit 1733 you
10 will see that Mr. Farley has checked joint and muscle pain
11 that he's having currently, and that he dates it from 1949.
12 Do you see that, sir?

13 A Yes.

14 Q And do you recall I asked you whether or not these
15 problems he was having in 1979 were real problems or whether
16 or not they were imaginary? Do you recall that, sir,
17 relative to these pains?

18 A Yes, I do recall that, sir.

19 Q And do you recall that you said that in your
20 judgment they were imaginary?

21 A No, sir.

22 Q Doctor, you don't recall that you said he had
23 depression in 1979, and therefore, it was your judgment that
24 these complaints that he had relative to pain were not real

1 and were imaginary?

2 A No, sir.

3 Q Are you saying, Doctor, that you didn't testify
4 that way the greater part of Friday afternoon?

5 A I'm saying that I testified in another way, sir.

6 Q Did you not tell us and the jury that these muscle
7 pains that he described in this exhibit were in your
8 judgment imaginary?

9 A No, sir.

10 Q Do you recall that we went into whether or not he
11 was neurotic?

12 A Yes, I do, sir.

13 Q And we went for sometime as to whether or not
14 neurotic people have imaginary complaints, believe that they
15 have the problem, but they're really imaginary. You don't
16 recall that, do you, sir?

17 A Yes, I do recall that, sir.

18 Q Doctor, to put it to you again, do you believe
19 that the muscle pains that Mr. Farley was having in 1979
20 were real muscle pains or were imaginary muscle pains?

21 A I can't answer that question, sir.

22 Q Well, I want the judgment that you had in 1979,
23 sir, of whether or not these complaints that he had at that
24 time were real, sir.

1 A He believed they were real, sir, yes.

2 Q All right. Now was he, in fact, in your judgment,
3 based upon the records that you had up to that time, sir,
4 and including that record, were they -- was he really having
5 these pains?

6 A We didn't believe that he was having them to the
7 extent that he said he was, I think --

8 Q Doctor, let me ask you on that point, sir.

9 A What I'm trying to say --

10 Q Let me interrupt you on that point. Was he having
11 the pain --

12 MR. HEINEMAN: Objection to the interruption, your
13 Honor. May the witness finish his answer?

14 THE COURT: Mr. Carr, you may proceed. Overruled.

15 Q (By Mr. Carr) Dr. Suskind, what I'm interested
16 in, was he having the pains, whether they were to the extent
17 that he says is not what I'm asking you, sir. Focus in on
18 this, Dr. Suskind, was he having the pains in your judgment
19 in 1979?

20 A I don't believe that he was having them. But he
21 believed he was, sir.

22 Q All right, Doctor.

23 A He believed he was.

24 Q He wasn't having the pains in your judgment;

1 correct, sir?

2 A Right.

3 Q But he believed they were. And these pains that
4 he said he was having were not there, were they, sir, in
5 your judgment?

6 A They were probably not there, sir.

7 Q Well, did you make a judgment that they weren't
8 there, sir? You're now saying probably weren't --

9 A They weren't there.

10 Q They weren't there?

11 A They weren't.

12 Q That means then that he imagined these pains;
13 correct?

14 A No, sir.

15 Q Doctor, if they were not there, they don't exist;
16 correct, sir? They're not real; is that correct, sir?

17 A They may not be real, sir.

18 Q Well, Doctor, is your answer that they are not
19 real? If they're not there, they're not there, are they,
20 sir?

21 A They're not real, sir, yes.

22 Q All right, they're not real. If they're not real,
23 then, sir, they are imagined, aren't they, sir?

24 A No, sir, that's not the alternative.

1 Q What is the other alternative?

2 A The alternative, sir, is he believed he had the
3 pain.

4 Q I understand that.

5 A As a neurotic, sir --

6 Q I understand that, sir.

7 A As a neurotic who was depressed, it was something
8 that he felt he had --

9 Q But he didn't really --

10 A -- even though he didn't. That's not imaginary.
11 Not at all.

12 Q Doctor --

13 A There is another alternative, sir.

14 Q If he believes he's having pain, but he's not
15 really having pains, these are unreal pains, are they not,
16 sir?

17 A They're unreal, yes.

18 Q He is imagining pains that are not really there;
19 correct, sir?

20 A No, not --

21 Q If they're -- what is the opposite to real,
22 Doctor? Is it unreal, imaginary, fictional, make-up? What
23 is the opposite of real?

24 A There are a number, insofar as pain is concerned,

1 insofar as pain is concerned, he may believe that he has
2 pain and may convince himself that he has pain, even though
3 the pain is not there, even though the pain is not real.
4 But he may feel that he has pain.

5 Q Doctor, I certainly agree with you on that point.

6 A Okay.

7 Q That's not my point. I'm sure by now you know
8 that's not my point. You said these pains are not real --

9 MR. HEINEMAN: Objection, your Honor. May Counsel
10 approach the bench?

11 THE COURT: Yes, you may.

12
13 (The following proceedings were had at the bench
14 out of the presence and hearing of the jury:)

15
16 THE COURT: Before you make your objection I want
17 to state something. This is a perfect example of why I
18 don't think anyone in this room is capable of making
19 estimates of time as to how much longer this will take.
20 The last part of Friday afternoon he stated that the pain
21 was, in fact, imaginary, the fatigue was imaginary, that the
22 dizziness was imagined, and then stated that all of his
23 problems were, in fact, imagined. He's now stating he
24 didn't say it.

1 That's just an example of what I was saying back
2 in chambers, that your request for a limit, the way things
3 have gone here, I agree a hundred percent that there should
4 be a limit, I wouldn't have any basis on which to calculate
5 one.

6 What objection do you have?

7 MR. HEINEMAN: My objection, your Honor, is to Mr.
8 Carr's statement. He just made a statement to this witness
9 that he knows that what he's saying is not in fact what he's
10 saying. Mr. Carr is saying that he knows the opposite is
11 true of what the witness has just said. Mr. Carr does not
12 have the right to make a statement like that. He has the
13 right to ask the witness questions. I object to the
14 statement. It's a jury speech. It's intended to make an
15 argument to the jury about what the witness is doing on the
16 stand. It's not a question. I object to it. I move that
17 it be stricken. I ask the jury be instructed to disregard
18 it.

19 MR. CARR: Your Honor, I wonder if it might save
20 us sometime if you would tell the witness not just to assume
21 that he said these things, but tell him, in fact, that he did
22 say that these problems were imaginary, and that this is an
23 unnecessary cross examination that we're going through
24 because he said Friday afternoon that these problems that

1 Mr. Farley had were imaginary, so we need not go through
2 this again. I don't think it's enough just to tell him to
3 assume. I think the Court should tell him that he, in fact,
4 said it, that they were imaginary.

5 MR. HEINEMAN: Well, your Honor, that isn't in
6 response to my objection. Mr. Carr is going off on another
7 point.

8 THE COURT: Yes. Do you have any response --

9 MR. CARR: No, this is on the same point, your
10 Honor. I'm trying to tell this witness that what he is
11 saying is exactly what I've asked him is not true, that
12 these are not real, and that, therefore, they are imaginary.
13 That was the point of my interruption of the witness'
14 statement.

15 MR. HEINEMAN: That isn't the point. That isn't
16 the point that he made the statement on, your Honor. I
17 still object to it, and I would ask the Court's ruling, and
18 then I would like to address the point that Mr. Carr just
19 raised.

20 THE COURT: Why don't you address the point that
21 he raised.

22 MR. HEINEMAN: Okay. The point that Mr. Carr just
23 raised, I object to your instructing this witness with
24 respect to what he has or has not testified to. Mr. Carr

1 has certainly -- I guess he doesn't have a transcript.

2 THE COURT: Not yet.

3 MR. HEINEMAN: I object to that. I don't think it
4 is within the Court's providence to be instructing a witness
5 as to what his testimony has been. If the witness does not
6 remember it, then he doesn't remember it, or if he remembers
7 it differently, then he remembers it differently. But I
8 don't think it's within the Court's providence to instruct
9 him as to what his testimony has been.

10 MR. CARR: Your Honor, I think it's going to be
11 essential that the Court does this from time to time or we
12 will never finish with this witness. If two minutes after I
13 establish a point, or a day after I establish a point, or
14 five minutes after I establish a point I have to go back and
15 reestablish it. This man is not stupid. He knows exactly
16 what he's doing. He can't say this is old age. The man is
17 as sharp as a tac. He may get tired, but there's no
18 indication to me that he's ever gotten tired. He's
19 certainly not tired now. He's perfectly capable of
20 remembering what he said. He is not senile in the least.
21 He is deliberately doing this in order to require me to
22 reestablish these points, and so that the jury will miss the
23 main point that I'm heading for. It's planned -- it's
24 planned on his part.

1 THE COURT: I've got to think about telling him
2 that he, in fact, said -- to tell him to assume that he in
3 fact said it. I've got to think about that.

4 MR. CARR: All right.

5 THE COURT: I think that the preferable thing for
6 you is to ask him to assume that, because when this came up
7 again I reviewed my notes, there's no question that it was
8 said. So you may proceed on the assumption of that, and
9 that's going to make your objection irrelevant. So I'm
10 ordering that we proceed on this basis and your objection is
11 denied.

12 MR. CARR: When I ask him to assume it, you're
13 going to have to tell him that he said, it, that it is in
14 evidence that he said it. You're going to have to make the
15 decision as to whether it is or is not in evidence.

16 THE COURT: If he doesn't accept the assumption.

17 MR. CARR: Right.

18

19 (The Following proceedings were had in the
20 presence and hearing of the jury:)

21

22 Q (By Mr. Carr) Doctor, in order to save us
23 sometime, I would like you to assume that Friday you
24 testified that the aches and pains and the fatigue and the

1 dizziness, these symptoms that Mr. Farley displayed -- or
2 said that he had in 1979, I'd like you to assume please that
3 you testified Friday that they were imaginary. Would you do
4 that?

5 A I will assume that.

6 Q Sir?

7 A I will assume that.

8 Q Now, that being the case, would you look at the
9 records, and I'd like you also to assume, sir, that Friday
10 you testified that the evidence that you had to support your
11 opinion that these symptoms on his part were imaginary was
12 his statement that he was depressed in '79. Will you also
13 assume that, sir?

14 MR. HEINEMAN: Objection, your Honor. May Counsel
15 approach the bench?

16 THE COURT: Yes, you may.

17
18 (The following proceedings were had at the bench
19 out of the hearing of the jury:)

20
21 MR. HEINEMAN: Your Honor, that's an incorrect
22 summary. The man testified not only that the record
23 established that he was depressed, but he also testified
24 that the man -- that the record established that the man had

1 a job, that he was working steady for the state, and that
2 the man had been seen in physical examination, he was well.
3 I think the doctor said he was doing fine, all of those
4 things were taken into consideration.

5 MR. CARR: I'll accept that, your Honor.

6 MR. HEINEMAN: All of those things.

7
8 (The following proceedings were had in the
9 presence and hearing of the jury:)

10
11 Q (By Mr. Carr) Doctor, I'd like you also to assume
12 that in addition to the depression statement that he made to
13 you that you also predicated your opinion upon the fact that
14 he was working at his job, and looked fine in '79 and in
15 '53, and that you also -- and then I asked you whether or
16 not you knew of any medical records to support any finding
17 that these complaints were imaginary. Now will you assume
18 those things, sir, that this went on Friday?

19 A Assume what medical records, sir?

20 Q Just what I told you, assume the things that I
21 said, that I recapped what went on Friday afternoon. Would
22 you assume that, sir?

23 A Okay, I'll assume that.

24 Q Now, I have given you the medical records that

1 have been given to us. I would like for you to look at
2 those medical records, sir, and see if there is anything in
3 the medical records that are there to support an opinion
4 that the problem Mr. Farley was having in 1979 were
5 imaginary?

6 A I will. But these are -- these are not the
7 medical records I was referring to, sir.

8 Q Doctor, these are all the medical records that we
9 have been given of Mr. Farley up to 1979 when you examined
10 him. Are there some other medical records that existed up
11 to 1979 that you used, sir, that we haven't been given?

12 A I can say that in some instances, and I can't say
13 it was true here, that we did refer to the plant medical
14 records.

15 Q Doctor, I've asked for all of the medical records
16 that Monsanto has relative to Mr. Farley, and what you have
17 are all the medical records that were delivered to me that
18 existed up to 1979 and including at least the first eight to
19 nine months of 1979.

20 MR. HEINEMAN: Your Honor, excuse me, am I to
21 assume that the plant records are not there?

22 MR. CARR: Counsel, I have no idea whether these
23 are plant records or what these are. I've asked you for all
24 the medical records that Monsanto had relating to Charles

20

1 Farley that were in existence since 1953 up to the present
2 time, and this is what you've given me that apply up to
3 1979.

4 MR. HEINEMAN: This includes the materials that
5 you got from Dr. Carnow in Nitro; is that right?

6 MR. CARR: I have no idea what you're talking
7 about, Counsel.

8 THE COURT: Gentlemen, could the two of you
9 approach the bench, please.

10
11 (The Following proceedings were had at the bench
12 out of the hearing of the jury:)

13
14 THE COURT: I'd rather have this discussion up
15 here.

16 MR. HEINEMAN: Okay. Your Honor, when he says he
17 has no idea what I'm talking about, I mean that can't be a
18 genuine statement. He knows exactly what we're talking
19 about. When we discussed the records that were provided to
20 Dr. Carnow in the Nitro case, and that we constructively
21 produced in this case, he's already admitted that to the
22 Court in chambers.

23 MR. CARR: Your Honor, I have never -- the only
24 thing I've gotten from Dr. Carnow relating to Mr. Farley was

1 this physical examination in '79, the examination that this
2 man conducted in 1979. I've asked here in Court for Counsel
3 to furnish me all the medical records they have in existence
4 since 1953 up to the present time. They have given me Dr.
5 Carnow's report, and his examination of the man, which is
6 post 1979, they have given me other material which is post
7 1979, they have given me the Moses and Selikoff Study which
8 is pre his examination in 1979, and they have given me his
9 1979 exam. Now that's all the records that I have.

10 MR. HEINEMAN: Your statement --

11 THE COURT: Let's see what's in there. While
12 you're in there what's going on with --

13 MR. CARR: They just turned it over this morning.
14 I haven't had a chance to look at it.

15 THE COURT: As long as its been found.

16 MR. HEINEMAN: I want to be sure I understand that
17 you have been given no plant medical records, either
18 constructively or --

19 MR. CARR: I have no idea what you've given Dr.
20 Carnow. I didn't ask Dr. Carnow for this material. This
21 was not material associated with my plaintiffs in this case.
22 He may have gobs of material relating to all the Nitro
23 plaintiffs. But in order to avoid that I asked you for all
24 the medical that you have since 1979. You have never told

1 me that this is in addition to what Dr. Carnow has.

2 MR. HEINEMAN: Since 1979?

3 MR. CARR: Since 1953, I'm sorry. I have no plant
4 records at all.

5 MR. HEINEMAN: You have no plant records --

6 MR. CARR: Unless these are the plant records. I
7 have a whole stack of them there, I assume they're the plant
8 records. I don't know whether they are or not. They all
9 have your numbers on them.

10 THE COURT: Let's see what he says he's got.
11 We'll go from there.

12

13 (The following proceedings were had in the
14 presence and hearing of the jury:)

15

16 Q (By Mr. Carr) Doctor, have you had a chance to
17 examine the records, sir?

18 A Not completely, sir. But I can say that these are
19 not -- these are not the medical records that we would have
20 had access to, sir.

21 Q Those are not the medical records that you had
22 access to?

23 A No, I'm talking about the medical department
24 visits to the medical department at Monsanto. While I

1 haven't gone through these thoroughly, I don't see the kinds
2 of records of the nurse or the examining physician at
3 Monsanto. These are West Virginia University records.
4 They are hospital records of hospitalizations for Mount
5 Sinai examination of the group which includes Mr. Farley,
6 and we did not have access to these, sir. I am not
7 referring to these medical records.

8 Q Doctor, didn't you have access to these medical
9 records?

10 A No, sir. Well, we didn't certainly have access to
11 the Mount Sinai records because they weren't available at
12 the time.

13 Q They were all made in April, the examinations took
14 place in April of '78, sir.

15 A Yes, but we didn't refer to them, because we were
16 doing our own epidemiologic study and had no interest in
17 what that group found. We were interested in what we found.

18 Q Well, Doctor, let's look at these medical records
19 that we have been furnished. Would you, sir? There are
20 some tabs on the medical records that you have there. Do
21 you see the one where there's Tab 7, 8 and 9, sir?

22 A Yes, I do.
23
24

1 (Plaintiff's Exhibit 1762 was marked for
2 identification by the court reporter.)
3

4 Q (By Mr. Carr) Doctor, Plaintiff's Exhibit 1762 is
5 part of the medical records that I've given you, is it not,
6 sir?

7 A Yes, sir.
8

9 (Plaintiff's Exhibit 1763 was marked for
10 identification by the court reporter.)
11

12 Q (By Mr. Carr) Plaintiff's Exhibit 1763 is also a
13 part of those records, are they not, sir? That would be the
14 tab numbered 9.
15

16 (Plaintiff's Exhibit 1764 was marked for
17 identification by the court reporter.)
18

19 Q (By Mr. Carr) You can see that they're the same,
20 are they not, Doctor? Here. 1764 is also a part of the
21 records that have been given you, that would be tab number
22 8, Doctor.

23 MR. CARR: Your Honor, for the record, 1762 is
24 this exhibit. It has a number --

1 THE COURT: Okay.

2 MR. CARR: 1763 is the rather dark exhibit. 1764
3 is this final exhibit.

4 THE COURT: Fine. Thank you.

5 MR. CARR: Your Honor, I'd like to offer these
6 into evidence.

7 MR. HEINEMAN: Your Honor, may Counsel approach
8 the bench?

9 THE COURT: Sure.

10

11 (The following proceedings were had at the bench
12 out of the hearing of the jury:)

13

14 MR. HEINEMAN: Your Honor, first of all, I would
15 ask that we have the entire group of records which have been
16 offered to the witness to be marked so that we can have a
17 record of what it is he's been given by Mr. Carr to look at.

18 MR. CARR: Sure, that's no problem.

19 THE COURT: Fine.

20 MR. HEINEMAN: And, secondly, we would object to
21 the admission of 1762, 1763 and 1764 in that as I understand
22 it there's been no foundation laid with respect to the
23 admission of these documents. As I understand what Mr. Carr
24 just told the Court, he never got from Dr. Carnow any

37

1 Counsel, outside medical records that you have in your --
2 Monsanto had in its files relative to Charles Farley. They
3 are the type of records that expert witnesses, medical
4 witnesses rely on in arriving at a diagnosis, and forming
5 judgments, and this is not to prove whether or not this man
6 did, in fact, have these problems, but for the purpose of
7 examining those records as to whether these man's complaints
8 are real or imaginary. The whole business of using these
9 records is caused only because this man says the record, the
10 medical records that he has seen, or this medical record
11 that he has right now is actually what he's talking about.
12 His own examination tells him that these complaints are
13 imaginary. This is for the purpose of impeaching that
14 statement.

15 THE COURT: So, in other words, you're saying --

16 MR. HEINEMAN: Your Honor, once they're in,
17 they're in. The point is there's been no foundation laid.
18 He has continually said that medical records can be used to
19 cross examine the witness, but you can't put them into
20 evidence without laying some sort of foundation for their
21 admission. Mr. Carr has objected to this all the way along
22 in this trial.

23 MR. CARR: I have never objected to any foundation.
24 on any medical records. You have brought in the plaintiffs'

1 medical records and used those to cross examine our doctors
2 without any foundation ever because we admit that they are
3 authentic by having -- by the fact that you got them from
4 the doctors. These are authentic records which the Court
5 can take judicial notice of the fact that they're authentic,
6 and that you gave them to us.

7 THE COURT: For the limited purpose I will allow
8 them in.

9 MR. CARR: Yes.

10
11 (The following proceedings were had in the
12 presence and hearing of the jury:)

13
14 (Plaintiff's Exhibit 1765 was marked for
15 identification by the court reporter.)

16
17 MR. CARR: Your Honor, I'd offer Plaintiff's
18 Exhibit 1765, group exhibit, at this time representing that
19 it is the medical records that Monsanto has given to us
20 relating to Charles Farley for his medical records up to and
21 including '79, 1979.

22 THE COURT: Your objection to 1765?

23 MR. HEINEMAN: The same position we took before,
24 your Honor, with respect to the portions --

1 THE COURT: Right. It's admitted over objection.

2 Q (By Mr. Carr) Doctor, Exhibit 1782 has in the
3 middle of it as a diagnosis Peyronies Disease; is that not
4 correct, sir?

5 A That's correct, sir.

6 Q That's dated as of 1976, is it not, sir?

7 A Yes, it is, sir.

8 Q It's a hospital record and it's signed by a
9 physician, is it not, sir?

10 A It's a summary statement, sir, yes.

11 Q It's signed by a doctor, isn't it, sir?

12 A Yes.

13 Q This is the type of record the doctors and other
14 experts customarily rely upon, is it not, sir?

15 A No, sir.

16 Q You don't customarily rely upon what other doctors
17 have said about --

18 A Yes, we do, sir.

19 Q This is one of those records that a doctor had
20 said something about a patient; isn't that correct, sir?

21 A Only one of them, sir, yes.

22 Q Yes. And this is the kind of record that doctors
23 customarily and ordinarily use and rely upon when they're
24 treating their patients and arriving at opinions about their

1 patients?

2 A No, sir.

3 Q You don't rely upon what other doctors have said?

4 A Yes, we do.

5 Q This is what some other doctor has said, is it
6 not, Dr. Suskind?

7 A This is simply a diagnosis, yes.

8 Q It's the diagnosis of another doctor, isn't it,
9 sir?

10 A Yes.

11 Q Don't you rely upon that in forming your own? You
12 may take it as untrue, you may take it as imagined, but it's
13 the kind of record that you and other doctors customarily
14 rely upon, that is hospital records, is it not, sir?

15 A Hospital records, yes, sir.

16 Q This is a hospital record, isn't it, sir?

17 A It's a summary of a hospital record, sir.

18 Q Is it part of a hospital record, Doctor?

19 A Yes, it is, sir.

20 Q Now, Doctor, this diagnosis that he made there on
21 Mr. Farley in '76 was Peyronies Disease, was it not, sir?

22 A Yes, it is, sir.

23 Q Would you say that the Peyronies Disease, that if
24 he had it in '76, that it was imagined, sir?

1 A No, sir.

2 Q All right. Doctor, the next exhibit, 1763, is a
3 record dated 1965, is it not, sir, and by a Dr. Donald
4 Gilbert?

5 A Yes, sir.

6 Q Doctor, this record shows, does it not, that he
7 had --

8 MR. HEINEMAN: Excuse me, your Honor. May Counsel
9 approach the bench?

10 THE COURT: Sure.

11

12 (The following proceedings were had at the bench
13 out of the presence and hearing of the jury:)

14

15 MR. HEINEMAN: Your Honor, I would object to the
16 use of 1762. I know that it was admitted for the limited
17 use of impeachment as to the witness' prior testimony. The
18 witness testified or was asked on cross examination by Mr.
19 Carr with respect to certain complaints or symptoms of
20 pains, aches, dizziness -- I don't remember what -- fatigue.
21 Fatigue, dizziness, muscle ache.

22 I don't have any recollection whatsoever of this
23 witness being asked about a symptom or complaint of
24 Peyronies Disease. This witness denied that this man had a

1 symptom or complaint of Peyronies Disease. I don't think
2 it's proper impeachment and I object to it. I ask that it
3 be stricken. I ask the jury be instructed to disregard it.

4 MR. CARR: Your Honor, Peyronies Disease is a
5 painful thing. There's no question but what it causes pain.
6 I think this witness established that it is in the past,
7 simply for that point and that point alone.

8 THE COURT: I didn't hear the last part.

9 MR. CARR: Simply for that point and that point
10 alone.

11 MR. HEINEMAN: The '79 report says he's got
12 Peyronies Disease, pain on erection, head of penis turns up.

13 MR. CARR: There's a point then that is admitted
14 by you, is it not, sir? So why the objection of 1762?

15 MR. HEINEMAN: You've got this to impeach him.
16 You're trying to use this to claim this is something he
17 didn't say. It's patently false. I mean he doesn't say in
18 the record the guy has Peyronies Disease.

19 THE COURT: I don't think that's the point of his
20 use. His use of it was limited, his use was pain related to
21 that. I don't think your objection is well taken. It's
22 overruled.

23

24

(The following proceedings were had in the presence and hearing of the jury:)

Q (By Mr. Carr) Doctor, Peyronies Disease is painful, is it not, sir?

A It can be, sir.

Q Well, is it painful in your judgment? Was this the kind of pain that this man was imagining in this case, pain from Peyronies Disease?

A If he had pain, it was probably not imaginary, sir.

Q Doctor, if he had pain, none of it is imaginary if he had pain.

A If he had pain from the Peyronies Disease, which is what you're asking me, sir, it wouldn't be imaginary. It wouldn't be imaginary. It would be real.

Q Pain from a muscle ache, pain from a joint is not imaginary if it's there, is it, sir,?

A It could be imaginary.

Q Doctor, my question is if it is there, it is not imaginary, is it, sir, just like if he has Peyronies Disease, and he has a painful case of Peyronies Disease, it is there and not imaginary, isn't it, sir?

A In the case of Peyronies Disease, yes, sir.

1 Q But in the case of a man having pain in his
2 muscles and joints, that kind of pain is imaginary?

3 A It's more likely to be imaginary, sir.

4 Q Doctor, why is a painful muscle more likely to be
5 imaginary or pain in a muscle or in a joint more likely to
6 be imaginary than pain in the penis?

7 A Peyronies Disease is characterized by inflammation
8 and scarring.

9 Q Yes.

10 A Inflammation and scarring. It has a definite
11 pathology.

12 Q Yes.

13 A And in the case of the persons who complained
14 about muscle pain, we took biopsies, sir, and there was no
15 pathology --

16 MR. CARR: Your Honor, the witness has gone way
17 beyond my question.

18 Q (By Mr. Carr) My question, Dr. Suskind, was
19 referring to pain, not the objective proof that the man did
20 or did not have pain. My question refers to the reality of
21 the pain. Is the pain that one has when he has painful
22 muscles or painful joints, is that pain real to the person,
23 sir?

24 MR. HEINEMAN: Objection, your Honor.

1 Q (By Mr. Carr) Is it real pain?

2 MR. HEINEMAN: Objection, your Honor, the question
3 was as to the difference between them. I think that's what
4 the doctor was answering.

5 THE COURT: Objection is overruled.

6 THE WITNESS: What is this question?

7 MR. CARR: Could you read the question?

8

9 (Question read.)

10

11 THE WITNESS: Yes, it could be real to the person.

12 Q (By Mr. Carr) Well, Doctor, if he has it, it is
13 real, is it not, sir? By definition, if he has pain, that
14 pain is real, isn't it, sir?

15 A No, sir.

16 Q Doctor, a rose is a rose, isn't it, sir? Pain is
17 pain, isn't it, sir?

18 A He could complain of pain, sir.

19 Q Doctor, I didn't say complain of pain, did I, sir?
20 I didn't say if he complains of pain that means he has pain.
21 You didn't understand me to say that, did you, sir?

22 A No, sir.

23 Q I know you didn't. Now, Doctor, what I said, what
24 if he has pain, not if he complains of pain, but if he has

1 pain, that pain is there, it's real, isn't it, sir? If he
2 has pain in his muscles.

3 A No.

4 Q Doctor, if he has pain in his muscles, does he
5 have pain in his muscles?

6 A My answer was no.

7 Q Doctor, do you understand that what you're saying,
8 I propose to you, sir, if he has pain in his muscle he has
9 pain, doesn't he, sir, in his muscles?

10 A He may believe he has pain.

11 Q I didn't ask you if he believed it. I said if he
12 has the pain. I didn't say if he believes he had the pain
13 or wasn't real. I said if he has the pain, he has the pain,
14 hasn't he, sir?

15 A Pain is a subjective symptom, sir.

16 Q But it exists whether it be subjective or
17 objective. Doesn't pain exist, sir?

18 A Not if it's subjective, no, sir.

19 Q You mean to say a person has pain, any pain that
20 is subjective doesn't exist?

21 A No. Some pains that are subjective may not be
22 real, sir. That's what I'm trying to say.

23 Q Doctor, if it's not real, it's imagined. My
24 question, sir, if you have a painful back and you can't

1 prove it to anybody, you have no signs of arthritis, you've
2 got no sign of a ruptured disc, you've got no sign of
3 inflammation, you've got a painful back, that pain exists in
4 your back, doesn't it, sir?

5 A It might.

6 Q No. If you have it, it does exist, doesn't it,
7 sir?

8 A No, not necessarily.

9 Q By definition, Doctor, if I have pain, if I have,
10 in fact, got pain, I'm having pain, aren't I, sir?

11 A If it's real, sir, yes. If it's real, the person
12 has pain.

13 Q All right. Real pain can exist without any
14 objective findings, can't it, sir?

15 A It might.

16 Q It can. It exists all the time, doesn't it?

17 A Yes.

18 Q You have real pain in the head, and no objective
19 findings?

20 A No. Correct, sir.

21 Q Your throat can hurt, no objective findings;
22 right, sir?

23 A No, sir, not really.

24 Q You can't have painful throats without objective

1 Findings?

2 A I don't believe so.

3 Q Let's pass that. You can have painful muscles in
4 the arms without objective findings, can't you, sir?

5 A Yes.

6 Q Doctor, all kinds of pain, most pain as a matter
7 of fact, exists without objective findings, don't they, sir?
8 It is by definition a subjective complaint, isn't it, sir?

9 A subjective symptoms, isn't it, sir?

10 A Yes, sir.

11 Q That means it can't be proven objectively,
12 correct, sir, because it's subjective; right?

13 A Yes, sir.

14 Q Now it's just as real, is it not, whether it's
15 subjective or objective, isn't it, sir? It's just as real,
16 isn't it, sir?

17 A No, sir.

18 Q Doctor, you mean to say the pain that one feels is
19 not real simply because it's subjective?

20 A No.

21 Q It is real, isn't it, sir?

22 A No.

23 Q It isn't real?

24 A No.

1 Q Pain one feels is not real?

2 A It may be believed, but may not be there.

3 Q Doctor, if I came up here and with a sharp point
4 stuck you with that point, that would cause you pain,
5 wouldn't it, sir?

6 A It would.

7 Q That would be real, wouldn't it, sir?

8 A Yes, sir.

9 Q And you would be -- and that would be subjective,
10 wouldn't it, sir? If you told us you had pain, that would
11 be subjective, wouldn't it, sir?

12 A Yes, sir.

13 Q Yeah. And nobody could prove that you were having
14 pain, could they, sir? No one could disprove that you were
15 having pain, could they, sir?

16 A There are tests for that kind of pain, sir.

17 Q Well, none of those tests were performed upon
18 these men, were they, sir?

19 A No, sir.

20 Q All right. So, Doctor, and those tests are not
21 ordinarily performed upon people, are they, sir?

22 A It depends on the situation.

23 Q So at this point in time, if I stuck you with
24 something sharp and did not leave a hole in your arm and you

1 Monsanto plant records. What he got were other records.

2 MR. CARR: I've asked for you -- you for these
3 records, Counsel, I didn't ask Carnow.

4 MR. HEINEMAN: You agreed in chambers, Mr. Carr,
5 that we didn't have to produce --

6 MR. CARR: Not at that time, Counsel. We were not
7 talking about those exhibits at that time. I wanted to get
8 from you in one bundle all of the medical records that you
9 had existing since 1953 and that's what the purpose of this
10 -- I went from these 36 men from you --

11 MR. HEINEMAN: You're talking about this most
12 recent request?

13 MR. CARR: No, it was about a month ago. It was
14 when this witness, two or three weeks ago, at least when
15 this witness first took the stand.

16 MR. HEINEMAN: All right. And you were informed
17 at that time, I think by Mr. Nassif, that there were certain
18 documents that had already been made available through
19 Nitro. Now, as I understand it, Judge, Mr. Farley was a
20 plaintiff in the Nitro case.

21 THE COURT: Wait a second. If I remember
22 correctly, the Nitro record response was later. I think
23 that's where it was agreed to. I don't think you referred
24 to Nitro in response to that original one. It was about

1 three weeks or a month ago.

2 MR. HEINEMAN: In any event, first of all, in
3 connection with these records, Mr. Farley, I believe, was a
4 plaintiff in the Nitro case. I believe that Dr. Conibear
5 did an analysis of these kinds of records of the Monsanto
6 plant records on the Nitro plaintiffs. So to say that Mr.
7 Carr didn't get those documents from Dr. Carnow, which is
8 the agreed source of those documents, I think is crazy.
9 They have them. She's analyzed them. He can have them from
10 him.

11 MR. CARR: Your Honor, I didn't get the records.
12 I'm not even talking about those records. That's not the
13 point of this question right now that's pending before the
14 Court.

15 MR. HEINEMAN: Okay. In any event, in connection
16 with the offer of these exhibits, there has been no
17 foundation laid for the admission of these exhibits. I
18 don't know whether these are outside medical records that
19 were obtained from some hospital, if they came from Mount
20 Sinai and their examination, or whether any of them came
21 from Monsanto's internal records. Looking at this it
22 doesn't look like any of these are internal Monsanto
23 records.

24 MR. CARR: They're obviously on the face of them,

1 told us you had pain, you would really be having the pain,
2 wouldn't you, sir?

3 A Yes, sir.

4 Q And it would be a subjective complaint, wouldn't
5 it, sir?

6 A Yes, sir.

7 Q And it would be real, wouldn't it, sir?

8 A It would be real, sir.

9 Q And the pain one has in his muscles, if he has
10 pain, it's also real, just like the pain --

11 A No, sir. No, sir.

12 Q It's not, sir?

13 A No, sir.

14 Q Doctor, why isn't muscle pain real? What makes
15 muscle pain or joint pain not real?

16 A It could be that the person believes they have
17 pain, but they do not really have pain.

18 Q I understand that, Doctor. I understand that.
19 I'm not talking about their belief now. Am I, sir? Do you
20 understand I'm not talking about their belief?

21 A This is what I'm trying to get at.

22 Q Doctor, do you understand that I don't want to
23 talk about beliefs at this point. I'm first trying to
24 establish, sir, that pain can really exist. If you're

1 having pain, you're having pain, aren't you, sir?

2 A No.

3 Q Doctor, what do you believe I said?

4 A If you're having pain, you're having pain.

5 Q Yes.

6 A I think that needs a qualification.

7 Q If I'm walking, I am walking.

8 A It needs a qualification, sir, with respect to
9 pain.

10 Q Doctor, the qualification you want to give is that
11 if he only believes he's having pain, he's not having pain.

12 A No, not necessarily.

13 Q Well, what qualification do you want to give, Dr.
14 Suskind?

15 A I think that one has to take into consideration
16 the behavior of the individual, and in this instance we felt
17 that the behavior of this individual was such --

18 Q I'm not even talking about this individual at this
19 time. I'm trying to establish a predicate, a basis before I
20 go to this individual. Don't you understand that, sir?

21 A I do.

22 Q I said to you, sir, if one is having pain, one is
23 having pain, and you said no. Do you recognize the
24 absurdity of what you said, Dr. Suskind?

1 A No.

2 Q Doctor, if I am walking, I am walking, am I not,
3 sir?

4 A Yes.

5 Q IF I am living, I am living, aren't I, sir?

6 A Correct.

7 Q IF I am thinking, I am thinking, aren't I, sir?

8 A IF you say you're thinking, yes.

9 Q No. IF I am thinking, I am thinking, aren't I,
10 sir?

11 A There's no objective evidence.

12 Q Doctor, I didn't say anything about any objective
13 evidence, did I, sir?

14 A No, sir.

15 Q Did you understand I'm not talking about objective
16 evidence, you know I'm not, don't you, sir?

17 A Right.

18 Q I'm just saying that if a fact exists, it exists,
19 doesn't it, sir?

20 A Yes.

21 Q Pain is a fact that exists in many circumstances,
22 doesn't it, sir?

23 A Yes.

24 Q IF pain exists, it exists, doesn't it, sir?

1 A It might exist. Exist is reality, sir.

2 Q That's what I'm talking about, sir. I'm talking
3 about real pain. Real pain does exist, doesn't it, sir?

4 A Real pain can exist.

5 Q Real pain does exist in this world, doesn't it,
6 sir?

7 A Yes, real pain.

8 Q People really have pain, don't they, sir?

9 A Yes, they really have pain.

10 Q If one is having real pain, he's having real pain,
11 isn't he, sir?

12 A Yes, sir.

13 Q Now, Doctor, the pain Mr. Farley was having in the
14 case of the Peyronies Disease was real, was it not, sir?

15 A I believe so.

16 Q And you could substantiate the fact that he's
17 having pain because you could see objective signs that he's
18 having pain, couldn't you, sir? Objective signs of a
19 condition that you know could well cause pain; isn't that
20 right, sir?

21 A Yes.

22 Q Peyronies Disease?

23 A Yes, sir.

24 Q So, therefore, when he says he has pain in the

1 instance of Payronies Disease, you can believe him because
2 there are objective things that you can build upon to
3 support a conclusion that he is having pain; correct, sir?
4 Is that correct, sir?

5 A That's correct.

6 Q Now one can have pain in his arms and shoulders
7 without any objective evidence, however, of that pain, can
8 he not, sir?

9 A Yes, sir.

10 Q Yes. Now, Mr. Farley certainly could have pain in
11 his arms and shoulders without any objective evidence of it,
12 can he not, sir?

13 A He could, sir.

14 Q Yes. But he's still having that pain, isn't he,
15 sir, even though there's no objective evidence of it, he's
16 having the pain, isn't he, sir?

17 A In the case of Mr. Farley, I didn't believe so,
18 sir.

19 Q Doctor, I didn't ask you what you believed at this
20 point in time, did I, sir? I asked you if Mr. Farley is
21 having pain in his arms and shoulders, he's really having
22 pain in his arms and shoulders, isn't he, sir? I didn't ask
23 you whether or not you believed it. I said if the fact is
24 that he's having pain in his arms and shoulders, he is

1 having pain in his arms and shoulders, if that's a fact,
2 isn't he, sir?

3 A No, sir.

4 Q Doctor, if the fact exists, it is a fact, isn't
5 it, sir?

6 A If we assume that he really has pain, he has pain.

7 Q Yes, that's what I'm asking you, Doctor, if the
8 fact exists.

9 A If we assume that he has pain, and it's real, then
10 he has pain.

11 Q In the case of the arms and shoulders, he can
12 really have pain there without any objective evidence, can't
13 he, sir?

14 A We said that, yes, sir.

15 Q All right, sir. So this report here shows that he
16 was having -- that he said he had pain in his shoulder and
17 anterior chest; correct, sir?

18 A Which exhibit are you referring to?

19 Q Exhibit 1763, the black one. The last sentence,
20 do you see that, sir, you wanted a stomach X-ray, an EKG
21 because of pain in his shoulder and anterior chest?

22 A Yes.

23 Q Now he was complaining of pain in his shoulders,
24 wasn't he, sir, according to this report?

1 A Yes.

2 Q Doctor, if he was having pain in his shoulders in
3 1965, it was real pain that he was having, wasn't it, sir?

4 A I don't know.

5 Q Well, now, Doctor, did you hear my question? I
6 said if he was having pain in 1965, he was having pain,
7 wasn't he, sir?

8 A If it was real, yes.

9 Q If he was having it, it was real, wasn't it, sir?

10 A No.

11 Q If he was having pain, it was real pain he was
12 having?

13 A He was complaining of pain.

14 Q That isn't what I asked you. I asked you if he
15 was having real pain, he was having real pain, wasn't he,
16 sir?

17 A I would have to say no, because this is a record
18 of complaints.

19 Q Doctor, I'm not asking you whether or not this
20 proves that he was really having pain. All I'm doing, Mr.
21 Farley is certainly capable of having pain in his shoulders
22 in 1965, wasn't he, sir?

23 A Yes.

24 Q If he was having it, he was having it, wasn't he,

1 sir?

2 A Not necessarily. He was complaining of it.

3 Q Doctor, I didn't ask you about complaining of it.

4 Did you understand what you said, sir?

5 A Yes, sir.

6 Q If he was having pain, he was having pain, wasn't
7 he, sir?

8 A I said no, sir.

9 Q I know you said that, sir.

10 A Yes, sir.

11 Q You understand that the question, the way I
12 phrased it, and the way I stated it, did not include that he
13 believed it, did not include that he was complaining of it,
14 did not include that you believed it. It was a simple
15 statement, sir, or question if the fact exists, the fact
16 exists.

17 A Are you referring to this record, sir?

18 Q Doctor, could you listen to my question, sir?

19 A This is an exhibit that you're giving to me.

20 Q Doctor, would you listen to my question.

21 A I will, sir.

22 Q If a fact exists, it exists, doesn't it, sir?

23 A If it is a fact, it exists.

24 Q Thank you, Doctor. And if he had pain, he was

1 having pain, wasn't he, sir?

2 A IF he had pain.

3 Q Yes, that's what I said.

4 A IF he had pain.

5 Q Is that right, sir?

6 A Yes. IF he had real pain, it exists.

7 Q Thank you, Doctor.

8 THE COURT: Mr. Carr, is this a good point to
9 break for lunch?

10 MR. CARR: Yes, it is.

11 THE COURT: Okay. We'll resume -- we'll break for
12 lunch at this time, and we'll resume testimony at 1:15. I
13 would remind you as to any other breaks that we take, you're
14 not to discuss this matter among yourselves, with anyone
15 outside of the jury panel, you're not as of yet to form any
16 conclusions or opinions about the matters on trial. Court
17 is in recess for lunch.

18

19 (Lunch recess.)

20

21 Q (By Mr. Carr) Doctor, you have 1764 in front of
22 you now, the one entitled "History and Physical
23 Examination." Name is Charles Farley in the left-hand
24 corner there.

1 A I do.

2 Q It states, does it not, sir, that he has frequent
3 headaches and his joints are generally stiff, pain in his
4 shoulders, no other complaints? The middle of the page,
5 H.E.E.N.T., colon.

6 A Yes. It indicates that he has frequent headaches,
7 wears glasses and no other complaints.

8 Q Musculoskeletal, his joints are stiff, pain in his
9 shoulders.

10 A Yes.

11 Q And, Doctor --

12 A Excuse me. Is there a date on this, sir?

13 Q If you look where the tab is, if you want a date
14 for it. All I can tell you is that it's two pages following
15 a document that's dated 1973 is the best I can tell you,
16 Doctor. Anything else you'd like to know?

17 A No. I have one other question. Who did this and
18 where was this done, sir?

19 Q Doctor, all I know is these are medical records
20 that were given to me by attorneys for Monsanto. I'm giving
21 you what I've got, sir.

22

23 (Plaintiff's Exhibit 1766 was marked for
24 identification by the court reporter.)

1

2

Q (By Mr. Carr) Doctor, I hand you what's been marked Plaintiff's Exhibit 1766.

4

5

(Plaintiff's Exhibits 1767 and 1768 were marked for identification by the court reporter.)

6

7

8

MR. CARR: I'd like to pass these exhibits to the jury as well, your Honor.

9

10

THE COURT: Any objections to these exhibits?

11

MR. HEINEMAN: Yes, your Honor. Well, first of all, they haven't been offered.

12

13

MR. CARR: The exhibit, I thought, was already in evidence from which these came. Plaintiff's Exhibit 1765. I'll confirm that with the witness.

14

15

16

THE COURT: They were. 1765 has been admitted.

17

MR. HEINEMAN: Do you know which is which?

18

MR. CARR: 1766 is the first one I gave you. It's dated October 18th. It's from the Mount Sinai Medical Center. 1767 is the one with the 076 in the right-hand corner. 1768 is the one that's captioned Environmental Sciences Laboratory, Mount Sinai School of Medicine.

19

20

21

22

23

Q (By Mr. Carr) Doctor, what I would like you to do, first of all, is to look at the tabs that are on the

24

1 Exhibit 1765 that are tabbed 1, 2, and 6, and see if these
2 exhibits that are marked 1766, 1767, and 1768 are not the
3 same as the exhibits that appear in that exhibit. It would
4 be the tab marked 6, Doctor.

5 A Yes, they appear to be from this record, sir.

6 Q And that's from Plaintiff's Group Exhibit 1765?

7 A I believe so, sir, yes.

8 Q Now, Doctor, there has been previously
9 considerable testimony relating to the study performed by a
10 Dr. Selikoff and Moses from the Mount Sinai School of
11 Medicine. Of course, you are aware that their study took
12 place in the spring of 1979 and yours took place in the
13 summer of 1979. Do you recall that, sir?

14 A Yes, I believe I do, sir.

15 Q And the Exhibit 1766 is a, the first page of a two
16 page letter, signed by Doctors Selikoff and Moses, is it
17 not, sir?

18 A Yes, it is, sir.

19 Q Doctor, Plaintiff's Exhibit 1766 states that the
20 physical examination revealed, in the second paragraph,
21 decreased acuity in the left ear, atrophy of the left biceps
22 and triceps with sensory changes in the arm; correct, sir?

23 A That's what it reads here, sir.

24 Q And, Doctor, in the next exhibit, 1767, is the

1 statement by the man relative to his particular problems in
2 the musculoskeletal and neurological areas, is it not, sir?

3 A Yes, it does cover those areas, sir.

4 Q And, Doctor, in the musculoskeletal line it says,
5 does it not, that he has joint pain which he first noticed
6 in '49, and that it's currently active and that it started
7 while working with 2,4,5-T? Do you see that, sir?

8 A Yes, I see it.

9 Q Now that is the same statement that he gave to
10 you, to your group in the summer of 1979, is it not, sir,
11 with regard to his joint pain? On page 17 of Exhibit 1733.

12 A For joint pain, yes, sir.

13 Q And he also related in the Dr. Selikoff/Moses,
14 Mount Sinai Study, that he had back pain that started in
15 '49, that he still has it, he has neck pain that started in
16 1949, and that he still has it, and that he's got bone or
17 muscle aches a lot, especially proximal arms. That would be
18 the part of the arms closer to the shoulders.

19 A It would be the forearms, I believe, sir.

20 Q The forearm. I thought that would be distal.

21 A Distal.

22 Q Proximal would be the part closest to the
23 shoulder, wouldn't it be?

24 A Could be.

1 Q Well, isn't that what his meant, sir?

2 A I believe so, yes.

3 Q All right. In the neurological -- he also says
4 that these problems started in '49, and they're currently
5 active; correct, sir? Is that correct, sir?

6 A There is a check off method, which, I believe, one
7 could interpret to mean that, sir.

8 Q Well, how else could you interpret it?

9 A Well, I said one could interpret it to mean that.

10 Q I know that, Doctor. But that leaves a question
11 of doubt.

12 A No, it doesn't.

13 Q There is no doubt then that's the way this is to
14 be interpreted, Doctor.

15 A If I interpreted that properly, that's what it
16 means then, sir, yes.

17 Q Thank you, Doctor. Doctor, also in the
18 neurological area he describes that he's had fatigue,
19 weakness, nervousness since 1955, and it started while
20 working with 2,4,5-T; is that correct, sir?

21 A Yes, I could interpret it to mean that.

22 Q Can you interpret it in any other way, Doctor?

23 A No, sir.

24 Q Thank you. Doctor, insomnia, he says he had that

1 in '73, currently active, and he says no, that he wasn't
2 working with 2,4,5-T at the time that started; correct, sir?

3 A It only indicates that it started in 1973, sir.

4 Q It's also currently active, doesn't it indicate
5 that, sir?

6 A Yes, sir.

7 Q And that it did not start while working with
8 2,4,5-T; isn't that correct, sir?

9 A That would be an interpretation, sir.

10 Q Isn't that the way you would interpret that --
11 isn't that the way you do interpret this, Dr. Suskind?

12 A Well, if indeed he wasn't working at that time
13 with 2,4,5-T, and I have to assume that he wasn't.

14 Q Doctor, I'm not asking you to assume that any of
15 this is the truth. I'm simply asking you to interpret this
16 record as you see it. It may be a bold-faced lie. It may
17 be imaginary. It may be made up. I want to ask you,
18 Doctor, don't you interpret this record to show that it
19 started while he was not working with 2,4,5-T?

20 A I have to assume, sir, that he wasn't working with
21 it in 1973.

22 Q Doctor, do you understand the question that I'm
23 asking you?

24 A Yes, I do, sir.

1 Q I'm not asking you to assume that he wasn't
2 working with 2,4,5-I in '73 or '72, or '51. I'm simply
3 asking you to interpret this record, sir. You interpret
4 this record that he means to say, does he not, sir, that
5 this started, and at the time it started he was not working
6 with 2,4,5-I?

7 A It doesn't say that in this, sir. Are you talking
8 about insomnia?

9 Q Isn't there an 'N' in the column of while working
10 with 2,4,5-I? 'Y' equals yes. Do you see that in there,
11 sir?

12 A Yes, sir. Okay.

13 Q Doesn't that 'N' stand for no?

14 A It does in the occupationally related column. But
15 there's no 'N' in the while working with column, sir.

16 Q Doctor, that 'N' is in the while working with
17 column.

18 A I thought that it referred to the occupationally
19 related. There's no 'N' in that column that you and I are
20 looking at. It says 'Y' is yes, but there's nothing
21 underneath that. Then in the next column it's
22 occupationally related. There's an 'N', which means no, and
23 'Y', which means yes.

24 Q Doctor, you do know that the investigator asked

1 the questions of the person and filled in the 'Y' or the
2 'N', do you not, sir?

3 A I would assume that he would do that, sir.

4 Q Doctor, you've seen these records before today,
5 have you not, sir?

6 A What, sir?

7 Q You've seen these records --

8 A I have not, sir.

9 Q You have not?

10 A I have not seen these records before you've handed
11 them to me.

12 Q You've never looked at the Moses/Selikoff records,
13 Dr. Suskind?

14 A I have read her paper, but I haven't seen the
15 records, sir.

16 Q Doctor, would you like to look at enough of that
17 record there to be satisfied that the 'N' stands for no, so
18 we can move on?

19 A I am satisfied in that other column 'N' means no.
20 I would assume that in the 2,4,5-I column that also means
21 no.

22 Q And he is stating thereby that his insomnia, when
23 the insomnia started he wasn't working with 2,4,5-I, isn't
24 that correct, sir?

1 A Yes.

2 Q Now, Doctor, the next exhibit, 1768, entitled
3 Environmental Sciences Laboratory, you see the question
4 there is asked have you ever had any of the following
5 problems or symptoms? Do you see that, sir?

6 A I see it, sir.

7 Q And he states that he has had dizziness, that
8 started in the '50's, and that he still has it, does he not,
9 sir?

10 A Yes, I can interpret it to mean that.

11 Q He has irritability, occasional irritability, just
12 like occasionally on dizziness, which started in the '50's,
13 and he still has it; correct, sir?

14 A Correct, sir.

15 Q He has trouble sleeping, which started in the
16 '60's, and he still has it; correct, sir?

17 A That's what the record reads, and it's a check off
18 list, yes, sir.

19 Q Is the answer to my question that this record does
20 show that he's said that he has the trouble sleeping which
21 started in the '60's, and he still has it?

22 A He says he has it, sir, yes, sir.

23 Q And on depression he says that he had it in the
24 past, that it started in the '50's, and that he still has

1 it; correct, sir?

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

3 Q Numbness and tingling, it started in the '60's,
4 and he still has it; correct, sir?

5 A That's what the check off record reads, sir, yes.

6 Q Trouble breathing, he had it in the '50's, but he
7 has not had it recently; correct, sir, according to this
8 check off of symptoms?

9 A Yes.

10 Q Chest pain he had in the '60's, it started in the
11 '60's, and he still has it; correct, sir?

12 A That's what this record reads, sir.

13 Q Pain in the calves or legs, started in the '50's
14 and he still has it; correct, sir?

15 A That's what this record reads.

16 Q Fatigue and tiredness started in the '50's and he
17 still has it; correct, sir?

18 A That's what this check off record reads, sir.

19 Q And he's got indigestion that started in the
20 '50's, and he still has it; correct, sir?

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

22 Q Abdominal pain started in the '50's and he still
23 has it; is that correct, sir, according to this record?

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

1 Q He has constipation, but he doesn't say when it
2 started, but he still has it; correct, sir?

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

4 Q Muscle cramps, joint pain, back or neck pain, all
5 of which started in the '50's, and he still has it; correct,
6 sir?

7 A That's what this record reads.

8 Q Trouble with sex life that started in the '70's,
9 and he still has it.

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

11 Q And skin problem that started in the '50's; is
12 that correct, sir?

13 A Yes. But he doesn't have it at the moment.

14 Q Doctor, is there anything in these records that
15 you have seen now, of all the medical records that we have
16 up to mid 1979, that would support a conclusion that the
17 problems of Mr. Farley always cleared with time?

18 A Sorry, I didn't hear that, sir. Always did what?

19 MR. CARR: Would you read the question to the
20 witness?

21

22 (Question read.)

23

24 THE WITNESS: Yes.

1 Q (By Mr. Carr) And what in the record supports the
2 conclusion to be reached in 1979, sir, if I didn't specify
3 it, that his problems, his myopathy, neuropathy, depression,
4 of the central nervous system, and these other problems,
5 always cleared with time?

6 A First of all, I don't know how this study was
7 conducted. I have no idea. All I have here is a --

8 Q Doctor, I'm not asking you whether or not --

9 A All I have here is a check off --

10 Q Doctor, would you let me finish so we won't spend
11 an entire day rambling on what you don't have or do have.

12 A Yes, sir.

13 Q What I want to know, sir, and my question is based
14 upon these records, whether they're the best records on
15 earth, or the worst records on earth, they all contain lies,
16 or you don't know what to believe or what not to believe, is
17 there anything in this record that you have in front of you,
18 sir, to support the conclusion that Farley's problems have
19 always cleared with time?

20 A Yes.

21 MR. HEINEMAN: Excuse me, Doctor.

22 Q (By Mr. Carr) And what is that, sir?

23 MR. HEINEMAN: Your Honor, could we approach the
24 bench?

1 THE COURT: Yes, you may.

2

3 (The following proceedings were had at the bench
4 out of the hearing of the jury:)

5

6 MR. HEINEMAN: Your Honor, I would clearly object
7 to any reference to Plaintiff's Exhibit 1765 in its entirety
8 because the witness clearly hasn't had time to review that
9 entire thing. He's been directed to certain specific pages
10 of it.

11 THE COURT: Wait a second. Wait a second. He
12 reviewed at least half of it, possibly more of it, this
13 morning when it was given to him. He has been directed to
14 certain parts of it. It was first brought up early this
15 morning. I think he has had the opportunity to review it,
16 and in front of the Court, I think also including while we
17 were up here he reviewed parts of it. So I think he's
18 reviewed at least a good portion of it in my presence while
19 we've been up here and while the question was posed to him
20 concerning the records.

21 MR. HEINEMAN: What do you base that on?

22 THE COURT: Seeing him do it. Watching him do it.
23 He's just a short distance from me. I saw him do it.

24 MR. HEINEMAN: So you've seen him review this

1 entire record?

2 THE COURT: I've seen him review a good portion of
3 it, if not all of it. Do you have any further objection?

4 MR. HEINEMAN: My objection stands, your Honor.

5 THE COURT: The objection is overruled.

6

7 (The following proceedings were had in the
8 presence and hearing of the jury:)

9

10 MR. CARR: Would you read the previous question
11 and answer.

12

13 (Question and answer read.)

14

15 Q (By Mr. Carr) And what is there in the records,
16 Doctor, that supports the conclusion that these problems of
17 his have always cleared with time?

18 A My view of the judgment, or my judgment, my
19 judgment --

20 Q Doctor, you understand that I'm not asking you
21 about your judgment now.

22 A -- of these records --

23 Q What I'm asking is to point out for me in these
24 records what supports your conclusion, what supports your

1 judgment. You've given us your judgment, Dr. Suskind, I now
2 want to find out from you what is there in these records
3 that supports that judgment.

4 A IF you take these records at face value --

5 Q Yes, that's what I'm asking you to do, Doctor.

6 A IF you take them at face value.

7 Q Yes.

8 A Then at this point in time Mr. Farley's pain and
9 other things are not cleared.

10 Q Thank you, Doctor.

11 A But, I'm not willing to do that.

12 Q Doctor, I'm asking you, sir, whether or not there
13 is anything in these records that supports a conclusion that
14 his problems have always cleared with time. Now you said
15 that there is something in these records that supports that
16 conclusion. I would like to know whether or not -- what
17 there is in these records that supports that conclusion,
18 sir.

19 MR. HEINEMAN: Objection, your Honor, asked and
20 answered.

21 THE COURT: Overruled.

22 THE WITNESS: It was my judgment of these records,
23 if you take these records at face value --

24 Q (By Mr. Carr) Dr. Suskind, you understand what

1 I'm asking. Please, sir, so that we can move on. I want
2 you to point out for me what in these records supports the
3 conclusion that his problems have always cleared with time,
4 if it exists in these records. If there's nothing in these
5 records to support that conclusion, sir, you can say that
6 too. But if you believe there is something in these records
7 to support that conclusion, I want you to tell me where it
8 is. I want you to identify it, sir.

9 A The only way I can answer --

10 MR. HEINEMAN: Same objection, your Honor.

11 THE COURT: Same ruling.

12 THE WITNESS: -- if you take these records at face
13 value, if you take these records at face value, then his
14 pains have not cleared.

15 Q (By Mr. Carr) Doctor, is what you're saying is
16 that there is nothing in these records to support a
17 conclusion that his problems have always cleared with time?
18 Is that what you're saying, sir?

19 A I have answered the question, sir, that's the
20 best --

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

23 THE COURT: Doctor, please answer the last
24 question that was asked of you.

1 THE WITNESS: As I indicated, if you take these at
2 face value --

3 MR. CARR: Your Honor, I submit the witness is
4 repeating the answer before to the previous question. He's
5 not answered the question that I've asked of him.

6 THE COURT: Doctor, please answer the question
7 that was asked of you, the last question, not the question
8 before it. Would you please read back the last question
9 that was asked?

10
11 (Question read.)

12
13 MR. HEINEMAN: Excuse me, your Honor, may Counsel
14 approach the bench?

15 THE COURT: Yes, you may.

16
17 (The following proceedings were had at the bench
18 out of the hearing of the jury:)

19
20 MR. HEINEMAN: I object to the question. I object
21 to the Court's direction to the witness to answer the
22 question at Counsel's request, because it's nothing more
23 than a rephrasing of the question which he just answered.
24 He has given the answer. He has now been asked and answered

1 three times, and I object to it on that basis.

2 THE COURT: It is a different question. He has
3 not answered that last question. He has refused to because
4 he's repeated the question. It's an example of the type of
5 behavior that this witness has engaged in, and renders the
6 Court incapable of making a time limit of the cross
7 examination. It is a refusal to answer what is obviously a
8 different question. It is a logical follow-up to the
9 question that was asked previously. Your objection is
10 overruled.

11

12 (The following proceedings were had in the
13 presence and hearing of the jury:)

14

15 Q (By Mr. Carr) Now would you answer the question,
16 please, sir.

17 A Would you read the question back please?

18

19 (Question read.)

20

21 THE WITNESS: I'm forced to say no, sir, there is
22 nothing in these records.

23 Q (By Mr. Carr) All right. Sir, if you're saying
24 no to that question, then, sir, point out for me what there

1 is in the record that supports the conclusion that Mr.
2 Farlay's problems have always cleared with time.

3 A That's the same question, sir, I believe. Isn't
4 it?

5 Q You answered the question I gave you, sir. You
6 said no. Of course, what I asked you was is what you're
7 saying, Dr. Suskind, is that there is nothing in these
8 records to support the conclusion that all the problems have
9 cleared with time, and your answer to that was no. I asked
10 if you meant to say that there is nothing in the records to
11 support that conclusion that the problems have always
12 cleared with time. Then I understand what you're saying.

13 A Yes. If you take these records at face value,
14 there's nothing in the record.

15 Q Doctor -- your Honor --

16 THE WITNESS: I'm answering it yes, there's
17 nothing in this record.

18 Q (By Mr. Carr) To support the conclusion that his
19 problems have always cleared with time; is that correct,
20 sir?

21 A Yes.

22 Q Doctor, is there anything in this record to
23 support an opinion that those problems that he had in 1979
24 and that he's had since 1953 when you saw him in 1953,

1 anything to support that opinion that his problems are
2 imaginary?

3 A No.

4 Q I'm sorry?

5 A There's nothing in this record, sir, as you have
6 given it to me.

7 Q To support the conclusion that his problems are
8 imaginary; is that correct, sir?

9 A Correct, sir. Correct.

10 Q All right. Now, Doctor, with regard to Willard
11 Forbes, did his problems clear with time?

12 A I would have to look at Willard Forbes' records.
13 I don't have these things in my memory, sir.

14 Q Would you give the witness Exhibit 1735, which is
15 your 1979 examination.

16 A Yes, I believe there is, in this record, in the
17 1979 record.

18 Q And what in the record supports the conclusion
19 that his problems have always cleared with time, Doctor?

20 A Well, for one thing, in the Physician's history --

21 Q What page is that, Doctor?

22 A On 23 in the skeletal examination there is no
23 indication that there was any complaint of pain. There was
24 no indication of any complaint of pain.

1 Q Doctor, on page 18 the man tells you that he has
2 muscle weakness, parathesia, does he not, sir?

3 A He says his arms go to sleep when he reads.
4 That's the parathesia, sir.

5 Q Doesn't he check the column that he currently has
6 parathesia?

7 A Yes. But there's also an indication as to when it
8 happens. He falls -- his arms go to sleep when he reads.

9 Q Doctor, is there also an indication that he has
10 muscle weakness in his limbs?

11 A He indicates that since '74. But with respect to
12 pain, which is what you're asking me about --

13 Q No, Doctor. That wasn't my question, Doctor.

14 A I thought it was, sir. I thought you were talking
15 about pain.

16 Q No. Don't you recall on Willard Forbes we did not
17 put pain in there, we put a check in there and called it
18 weakness? I think you wrote it in yourself. Maybe I wrote
19 it in. Do you have Exhibit 1734, sir? He wasn't
20 complaining about pain. He was complaining about weakness
21 and parathesia.

22 A Yes. We have in 1979, you had me check off pain,
23 weakness. This is how it reads, sir --

24 Q Dr. Suskind, don't you remember that I told you

1 we're going to put it there so we won't make a separate
2 column for weakness, and we're going to write the word
3 'weakness' in there so we know what it means?

4 A I didn't know it was a substitute for pain, sir.

5 Q You don't recall me telling you that, sir?

6 A No, sir, I do not.

7 Q But I must have neglected to tell you that, sir.
8 That checkmark in Exhibit 1734 means as it is written in
9 there, weakness, sir. My question to you, Doctor, is there
10 anything in this record, your records to support the
11 conclusion that his problems have always cleared with time?

12 A I do believe it has, because this is different
13 from '53, sir. If you compare what he had in '53 to what he
14 had now, what he had in '79, he had pain in '53, complained
15 about some pain. In '79 there was no evidence of it, sir.

16 Q So the pain cleared up, Doctor. What other
17 problems did he complain about in 1953, sir?

18 A I don't believe he complained about weakness.

19 Q Doctor, he told you, did he not, sir, that he had
20 had a stroke in 1952?

21 A Yes, sir.

22 Q Doctor, there was a stroke at age 33 years of age,
23 wasn't it, sir, thereabouts? I'm sorry, it would have been
24 41 years of age. Is that correct, sir?

1 MR. HEINEMAN: Excuse me, which exhibit are you
2 referring to?

3 MR. CARR: The 1953 exhibit that the witness is
4 referring to.

5 MR. HEINEMAN: 1701?

6 MR. CARR: 1701.

7 MR. HEINEMAN: Thank you.

8 THE WITNESS: He indicated that he had a stroke,
9 according to the record, sir, in 1952. The stroke is put in
10 quotation marks, and I don't believe he was ever
11 hospitalized for it. That's why it was put in quotation
12 marks at that time.

13 Q (By Mr. Carr) Doctor --

14 A He did complain at that time, he complained of
15 mild pain which he did not complain about in 1979, sir.

16 Q Doctor, he had an absent ankle jerk -- well, maybe
17 you don't know that, do you, sir? Would you mark these
18 whatever the next number is.

19

20 (Plaintiff's Exhibit 1769 was marked for
21 identification by the court reporter.)

22

23 Q (By Mr. Carr) Doctor, I hand you what's been
24 marked Plaintiff's Exhibit 1769 and ask you to -- represent

1 to you that these are the complete medical records given to
2 us by Monsanto relative to Willard Forbes as they existed up
3 to mid 1979, and ask you to take a look -- first of all,
4 your Honor, I'd like to offer these exhibits into evidence,
5 1769.

6 THE COURT: Any objection?

7 MR. HEINEMAN: Yes, your Honor, if Counsel may
8 approach the bench.

9 THE COURT: Sure.

10
11 (The following proceedings were had at the bench
12 out of the hearing of the jury:)

13
14 MR. HEINEMAN: Your Honor, based upon the numbers
15 of documents that I have had provided to me, the numbers
16 that have been provided to me as to what's been provided to
17 Mr. Carr, I don't believe that these numbers are complete,
18 that this isn't a complete set of what has been provided to
19 Mr. Carr.

20 MR. CARR: They are not a complete set. You've
21 provided me with medical up to date. My question goes to
22 '79, Counsel.

23 MR. HEINEMAN: All right.

24 THE COURT: I think you said the middle of 1979.

1 MR. HEINEMAN: Well, I thought that Mr. Carr's
2 statement was this was a complete copy of all the records
3 that had been provided to him.

4 MR. CARR: No.

5 THE COURT: Up to mid 1978 was the qualification
6 of that.

7 MR. HEINEMAN: Well, I can't check on that because
8 I've only got the complete set of numbers.

9 THE COURT: I understand. It was mid 1979.

10 MR. HEINEMAN: I'm going to object to these
11 records on the basis that no foundation has been laid
12 through this witness or through any other witness to their
13 admission into evidence. There's been no testimony to
14 establish such a foundation.

15 MR. CARR: We say the same thing we said before,
16 your Honor.

17 THE COURT: They're admitted over the objection.

18

19 (The following proceedings were had in the
20 presence and hearing of the jury:)

21

22 Q (By Mr. Carr) Doctor, if you would, I'd like --
23 you certainly may look through the entire pile if you want
24 and when you want, but I'd like to direct your attention to

1 the tabs that I have put on pages in that exhibit. The tab
2 numbered 1 shows, does it not, that the man had an absent
3 ankle jerk on the left in examination in April of '79? Do
4 you see it there, Doctor, or could I help you?

5 A Yes, sir, I see it.

6 Q Well, could you answer my question so we can move
7 on?

8 MR. HEINEMAN: Objection, your Honor, he just said
9 he could take his time to look at the exhibit.

10 THE WITNESS: I'm not sure I heard the question,
11 sir. What is the question? I have it here, yes.

12 Q (By Mr. Carr) I directed your attention to the
13 yellow tab that has the number 1 on it, sir.

14 MR. HEINEMAN: May I interpose the same objection,
15 your Honor.

16 THE COURT: Objection is overruled.

17 THE WITNESS: I saw it. I have number 1, sir.

18 Q (By Mr. Carr) It shows the man on a neurological
19 examination had an absent ankle reflex, does it not, sir?

20 A So the record indicates, sir.

21 Q That's the record of the doctor that examined him
22 at the time; correct, sir?

23 A I don't know. But that's the record, sir. I have
24 no idea who did it.

1 Q Doctor, my question is that is a record of the
2 doctor that examined him at the time, is it not, sir?

3 A I assume so, but I have no record that a doctor
4 did it. It isn't signed, sir.

5 Q Doctor, you do know that they employed doctors in
6 the Moses/Selikoff Study to perform these examinations,
7 don't you, sir?

8 A No, sir, I don't know how it was conducted, sir.
9 I have no idea.

10 Q Well, you haven't read the report of
11 Moses/Selikoff that was published, Dr. Suskind?

12 A I have, sir.

13 Q Do they not state in that report that they had
14 doctors, neurologists, internists, et cetera, a wide variety
15 of doctors examine these people?

16 A I can't remember specifically whether they said
17 that in that article, sir. I don't have it with me.

18 Q And you can't remember?

19 A No, sir, I cannot.

20 Q Would you assume, please, sir, that they did say
21 that?

22 MR. HEINEMAN: May I object to that, unless we can
23 look at it and see.

24 MR. CARR: If you want to take a look at it,

1 Counsel, go ahead and take a look at it. But may I continue
2 my examination?

3 MR. HEINEMAN: May I see it?

4 THE COURT: Go ahead, Mr. Carr.

5 MR. CARR: You have your Exhibit 909. You want to
6 look a it. SOB, Counsel, not 909.

7 Q (By Mr. Carr) Would you like to look at it as
8 well, sir, to refresh your memory that they had physicians,
9 examining physicians, sir?

10 A What I read, sir --

11 Q Do you read that they used the word examining
12 physicians in there, Doctor?

13 A Yes. But --

14 Q Thank you.

15 A But they have a section on neurology, and not all
16 the persons were examined by a neurologist. A subset was
17 examined by a neurologist.

18 Q I don't care whether it was a subset, or one or
19 fifty. Did they not have doctors that made the
20 examinations, sir, all kinds of doctors made the
21 examinations?

22 A They did.

23 Q Yes.

24 A But whether or not a doctor did this, I don't

1 know.

2 Q Doctor, my question was that this predicated upon,
3 as you know, these examinations were conducted by doctors,
4 don't you, sir? You said I don't know that, I haven't read
5 it. Now I've shown you where it does appear in your record.

6 A Yes.

7 MR. HEINEMAN: Objection, sir. He didn't say he
8 hadn't read it. He said he didn't recognize it.

9 THE COURT: Objection sustained. He did say that.

10 Q (By Mr. Carr) The record shows that he had an
11 absent ankle jerk.

12 A It did, sir.

13 Q Tab number 2 shows that he had a stroke in 1950;
14 isn't that correct, sir?

15 A There's an indication that there is, that he --

16 Q Doctor, parathesia, weakness as you found in your
17 1950 -- 1979 report, or at least he reported to you it
18 existed in 1979 --

19 A Right.

20 Q -- does or can come with a stroke, can it not,
21 sir?

22 A It can, indeed.

23 Q Yes. And, Doctor, your examination in 1979, your
24 neurological examination, what did it reveal with relation

1 to the ankle reflexes? If you look on page 24, sir.

2 A It says parathesia on the right side foot. That's
3 what it says.

4 Q And that, sir, is in the history portion. I want
5 you to look at the physical examination portion.

6 A There was nothing in the examination portion
7 except a drawing which is usually used to indicate reflexes
8 when they're abnormal.

9 Q What reflexes did your examiner indicate are
10 normal or are abnormal?

11 A None were shown at the time, sir.

12 Q What question, did he check whether or not they
13 had any abnormal findings?

14 A In this record there was none checked, sir.

15 Q So you don't know from this record whether he had
16 an absent ankle reflex upon your examination as he did in
17 April of '79 or not; is that right, sir?

18 A From this I couldn't tell, sir.

19 Q But we do have somebody's record that he had an
20 absent reflex; correct, sir?

21 A An earlier examination, sir.

22 Q And page 24 also shows he had a right sided stroke
23 by history.

24 A Yes, sir.

1 Q And I can't make out what foot that would be.

2 A That's a, I believe it reads on the ball of the
3 foot, on the right side, there is a parathesia. So he has
4 tingling sensation in the bone of the right foot.

5 Q Doctor, it would indicate that he still has
6 problems in 1979, has he not, sir?

7 A Related to the stroke, sir, yes.

8 Q And the stroke, it could be related to dioxin
9 exposure, could it not, sir?

10 A It could not, sir.

11 Q Why not, Doctor?

12 A Because there's no evidence that I know of that
13 shows stroke is related to dioxin.

14 Q Well, Doctor, you know that there's a wide variety
15 of central nervous system disorders that can come with
16 dioxin exposure. You know that, don't you, sir?

17 A No, I do not, sir.

18 Q Doctor, haven't you related those yourself, sir?
19 Eye, respiratory, headache, malaise. Headache certainly is
20 in the brain, isn't it, sir?

21 A It may or may not be. It may be vascular.

22 Q Is there a headache in the brain, Doctor?

23 A It may not be in the brain, sir. It may be
24 pressure.

1 Q Vascular?

2 A Vascular pressure. From the outside, not inside.

3 Q So the vascular pressure from dioxin exposure can
4 cause headaches; is that what you're saying?

5 A No, sir. There was no vascular -- to my knowledge
6 there's no indication of a neurovascular effect from dioxin.

7 Q Well, if it's not neural, what is a headache?

8 A It could be behavioral.

9 Q So dioxin could cause a behavior headache?

10 A It could be worry. It could be a wide variety of
11 things. In this case, in the acute exposure, we do have
12 headaches. In the acute exposure. That was acute exposure
13 to trichlorophenol, as well as what else was in it in 1949.

14 Q You say here it was health effects of TCDD, don't
15 you, sir? You don't say anything about the --

16 A Well, I say following --

17 Q Excuse me, Doctor. My question is you say here
18 "Human Health Effects TCDD", don't you, sir?

19 A That's only part of the title, sir.

20 Q The title is "Table 1 Human Health Effects-TCDD;"
21 isn't that correct, sir?

22 A That's part of the title, sir. Shall I read the
23 rest of it?

24 Q Doctor, isn't your title this, "Table 1 Human

1 Health Effects-TCDD?"

2 A Yes, and acute following TCP run-away reaction.
3 So it's the TCP run-away reaction which is responsible for
4 the irritation, the headache and the malaise.

5 Q And not the TCDD?

6 A It might be, but the TCP -- the TCDD is not -- I
7 don't believe, I don't believe that it's responsible for the
8 respiratory, skin, and eye irritation. I believe that the
9 trichlorophenol is.

10 Q Doctor, why have you told the world, why have you
11 put this under the category "Table 1 Human Health Effects-
12 TCDD," if you don't think TCDD caused these problems?

13 A If you take it in an isolated way, the way you're
14 doing, out of context, that's so. If you read the article,
15 sir, if you read the article, you will see clearly that I
16 say in the article that the acute effects which have been
17 attributed to TCDD is due to the trichlorophenol in the run-
18 away reaction.

19 Q Doctor, how do you know that?

20 A Well, it was shown at Seveso as well.

21 Q Doctor --

22 A It was shown in other run-away reactions.

23 Q Doctor, didn't they have TCDD at Seveso?

24 A Yes, they did.

1 Q Didn't they have TCDD in these other run-away
2 reactions?

3 A Yes, but they had trichlorophenol all over the
4 place.

5 Q Sure, they did, Doctor. They had TCDD all over
6 the place, didn't they, sir?

7 A In some instances, yes.

8 Q Doctor, what makes you say it was caused by the
9 ICP and not by the TCDD? They had both in both cases, did
10 they not, sir?

11 A Yes.

12 Q And you didn't say -- and you have -- strike that.
13 You did put this problem as connected with human health
14 effects of TCDD, didn't you, sir?

15 A With an explanation in my paper, sir, which you
16 haven't alluded to.

17 Q And, Doctor, are you suggesting to this jury now
18 that the vascular problems that these people had that caused
19 these headaches were not caused in any way by the TCDD?

20 MR. HEINEMAN: Objection, your Honor. May Counsel
21 approach the bench?

22 THE COURT: Yes.
23
24

1 (The following proceedings were had at the bench
2 out of the hearing of the jury:)

3
4 MR. HEINEMAN: Mr. Carr is at it again.

5 THE COURT: Keep your voice down.

6 MR. HEINEMAN: The witness didn't say that the
7 headaches were caused by vascular problems. He gave
8 vascular problems as a cause of headaches. He didn't say
9 that these people had vascular problems that caused
10 headaches. It may be, but this witness didn't just say
11 that. I object to the question as misstating his testimony.

12 MR. CARR: I think it's clearly what the man said.
13 Vascular headaches caused by TCP now, not caused by TCDD,
14 but caused by TCP. At least that's what I understood him to
15 say.

16 THE COURT: Objection is overruled.

17
18 (The following proceedings were had in the
19 presence and hearing of the jury:)

20
21 Q (By Mr. Carr) Doctor, these headaches that people
22 have been having with all these run-away reactions in all
23 these exposures, are they headaches that in your judgment
24 were vascular headaches or neural headaches, sir? First of

1 all, were they vascular headaches in your judgment, Doctor?

2 A I really can't tell you, sir.

3 Q Are you saying they could be vascular?

4 A They could be vascular headaches, yes.

5 Q Doctor, are you saying in all these instances at
6 these various places where people have had headaches
7 associated with these exposures that you can say that they
8 were not caused by the TCDD?

9 A If they were in run-away reactions, Mr. Carr, it's
10 possible, very likely that the acute reactions, which
11 included headaches, some of them severe, was probably due to
12 the irritant reaction of trichlorophenol.

13 Q Doctor, my question to you is are you saying that
14 in no way could these headaches be caused by the TCDD?

15 A No, I'm not saying that, sir.

16 Q All right. Now, if they were caused by TCDD,
17 Doctor, they were vascular headaches, were they, sir, or can
18 you say they were not vascular headaches?

19 A I really can't tell you that because we don't know
20 that.

21 Q It could be that they're vascular headaches?

22 A Could be, sure.

23 Q If TCDD could cause a vascular headache, sir, it
24 could also cause a vascular stroke, could it not, sir?

1 A Not necessarily, no, sir.

2 Q Doctor, I agree not necessarily. My question is
3 if TCDD can cause a vascular headache, it may also be able
4 to cause a stroke; isn't that correct?

5 A The answer is no.

6 Q What?

7 A No, sir.

8 Q Doctor, you said not necessarily a moment ago, did
9 you not, sir?

10 A I say no, sir.

11 Q Did you say not necessarily a moment ago, Doctor?

12 A I did, indeed.

13 Q Yes. And by that you meant that it could, but
14 wouldn't necessarily do so; isn't that correct, sir?

15 A No, there's no evidence, sir, to show that.

16 Q Doctor, is there evidence to show that it causes a
17 vascular headache?

18 A No, there's no evidence.

19 Q Doctor, you said that it's certainly possible that
20 the TCDD can cause a vascular headache, did you not, sir?

21 A It's possible.

22 Q Yes. And it has a vascular effect, vascular
23 meaning blood vessels; correct, sir?

24 A An organic vascular effect with atherosclerosis is

1 different than a vascular headache type of effect.

2 Q Doctor, I'm talking about a vascular headache that
3 ICDD has an effect upon the blood vessels, therefore it's
4 called vascular; isn't that correct, sir?

5 A I really don't know.

6 Q Doctor, let me put it a different way. Vascular
7 and blood vessels, vascular means blood vessels, doesn't it,
8 sir?

9 A It does, indeed.

10 Q And a headache, a vascular headache is caused by
11 something affecting the blood vessels; isn't that correct,
12 sir?

13 A It's usually caused by something that dilates.
14 Dilates, not constricts, dilates the blood vessels. I don't
15 know whether ICDD does that. I have no idea. But
16 headaches, of course, by the increased -- increased blood
17 flow through the vessels outside of the brain, outside of
18 the brain with pressure.

19 Q Puts pressure on the brain?

20 A And a stroke is usually the result of
21 atherosclerosis, which is a plugging of the vessels of the
22 brain.

23 Q Doctor, this man was 40 years of age, or right at
24 40 years of age, was he not, sir?

1 A It was in '51.

2 Q The Moses/Salikoff report says 1950. He was 42 at
3 the time you saw him in 1953. That would put him 39,
4 wouldn't it, sir?

5 A In 1953. He said he had it in '51. It doesn't
6 matter, either 39 or 40, sir, yes.

7 Q Doctor, how would a 39 or 40 year old man have a
8 stroke? What would cause it, sir?

9 A One can have early atherosclerosis, sir.

10 Q Is there any indication in any medical record that
11 you saw that this man had early atherosclerosis?

12 A I have no idea. If you want me to check on his
13 history, I'd be happy to do that.

14 Q Doctor, was there any indication in the records
15 which you have, the records that you took that this man had
16 any kind of atherosclerotic problem?

17 A Well, he had diabetes, sir, and diabetes makes
18 people prone to having vascular problems.

19 Q Doctor, when did he get the diabetes?

20 A Well, I don't know when this is dated, but in the
21 history page there's a history of diabetes.

22 Q My question, Doctor, is when did he get the
23 diabetes?

24 A I don't know. I have no idea. I don't see any

1 date here, but the interviewer put down diabetes under the
2 stroke, sir, on page 15.

3 Q Doctor, I thought this was the worker writing this
4 down and not the investigator.

5 A No, sir. This was the interviewer. This was an
6 administrated interview, sir.

7 Q The Moses/Selikoff one was, and yours was as well?

8 A I don't know whether the Moses/Selikoff was, but
9 ours was.

10 Q And your man did not put down when he had the
11 diabetes; is that what your investigator did, sir?

12 A Right.

13 Q So we have no idea from what your investigator put
14 in when the man had the diabetes?

15 A I don't know whether he had it in 1950 or before.

16 Q Excuse me, Doctor. Do you understand my question
17 to be that we have no idea when the man had diabetes?

18 A From this record, I don't.

19 Q Is there any record in the medical records that
20 I've given you, Doctor, to suggest that he had diabetes and
21 if so, when did he have it?

22 A I don't believe you've given me his complete
23 medical record.

24 Q I've given you all the medical records that

1 Monsanto gave me up to mid 1979, Doctor.

2 A I have not gone through this, and this is the
3 first time I've seen it, and you tag material for me to
4 read, and I've done it.

5 Q Yes.

6 A But I have no idea whether or not there is any
7 indication to -- yes, I'm sorry, there is. Oh, well,
8 whatever that page is under medications. There's an oral
9 diabetic medication.

10 Q Yes. When does it indicate that he started taking
11 that?

12 A It says '76, sir.

13 Q Yes. Thank you. Now '76, that would be 20 some
14 odd years after his stroke, wouldn't it, sir?

15 A Yes.

16 Q It's extremely unlikely that he had a diabetic
17 caused stroke, would it not, sir?

18 A No, sir, not at all.

19 Q Is that what you're saying, Doctor?

20 A Yes, that's what I'm saying because people can
21 have --

22 Q Doctor, he had a stroke in 1950 and not start
23 taking the medicine, a stroke that could be caused by
24 diabetes, and that he wouldn't be diagnosed and treated for

1 diabetes until 1976, 26 years later; is that what you're
2 saying, Doctor?

3 A Sir, I'm not saying the stroke was caused by the
4 diabetes, sir.

5 Q Is that what you're saying, sir?

6 A No, I'm not saying that.

7 Q Doctor, let's pass to the next man, if you would,
8 sir. Mr. Johnathan Hurley. Is there anything, sir, in his
9 1979 report by you that would support a conclusion that his
10 problems have always cleared with time?

11 A If I can have Mr. Hurley's record.

12 Q 1737. I'm sorry. Would you give him Exhibit
13 1737.

14 A Yes.

15 Q And what is there, Doctor, in your 1979 record to
16 support a conclusion that his problems have always cleared
17 with time?

18 A The joint pains that he complained of are -- were
19 regarded as arthritis, and he did have rather severe
20 arthritis at the time that we saw him in 1979 when he was 86
21 years old.

22 Q Doctor, he tells you that he had arthritis
23 starting after the explosion, didn't he, sir?

24 A That's what he claimed, yes.

1 Q So what he's telling you is his pain started after
2 the explosion; isn't he, sir?

3 A I don't know whether you can distinguish between
4 pain --

5 Q Doctor, you did not diagnose him as having
6 arthritis in 1953, did you, sir? Plaintiff's Exhibit 1701.

7 A Sir, in 1953 he didn't make a complaint of
8 arthritis as he did in '79.

9 Q But, Doctor, in 1953 he complained of pain, did he
10 not? He developed pains six weeks following the assignment,
11 he developed pains in the right hip and both feet,
12 irritability and fatigue and insomnia.

13 A That was in 1949, sir.

14 Q And that he was still having, sir, in 1953
15 insomnia, pain in hips and thighs and feet, involuntary
16 switching of muscles of arms and legs, swelling of the
17 eyelids, slight nervousness and fatigue.

18 A This is what he claims, sir.

19 Q You believed he was telling the truth then, didn't
20 you, sir?

21 A I do, indeed.

22 Q You believed he was having those problems, didn't
23 you, sir?

24 A Yes.

1 Q In 1979 he is still having those problems, isn't
2 he, sir?

3 A He indicated that he was having those -- some of
4 them, anyway.

5 Q Well, Doctor, the pain problem is the one we're
6 talking about now. He still has it, does he not, sir, and
7 he says that it started after the explosion? He claimed
8 that he did and he claimed it started right after the
9 explosion, did he not, sir?

10 A That's what he claimed, sir.

11 Q So he's saying to you that he's having the same
12 pain in 1979 that started in 1949; isn't that correct, sir?

13 A That's what he claimed, sir.

14 Q Doctor, that's not an indication that his pain
15 problem went away, solved with time, is it, sir?

16 A His pain could be due to another cause, sir.

17 Q Excuse me, Doctor, that is not an indication that
18 his problems always cleared with time, is it, sir?

19 A Yes.

20 Q Doctor, if he has the same pain in 1979 that he
21 had in 1949, are you saying that that shows that his problem
22 has cleared with time?

23 A Yes, sir.

24 Q Was he having pain in '49, sir?

1 A Yes, he was.

2 Q Was he having pain in '79, sir?

3 A He claimed that he was.

4 Q My question is was he having pain in your judgment
5 in 1979?

6 A Yes. The pain might be different, though.

7 Q Doctor, is there any description that it was
8 different?

9 A No, but here was an 86 year --

10 Q Excuse me, Doctor, is there any description that
11 it was different, to support your speculation that it might
12 be different?

13 A There is no description, except arthritis, sir.

14 Q Doctor, could you answer my question, please, sir.

15 MR. HEINEMAN: Objection, your Honor, he just did.

16 THE COURT: Overruled.

17 THE WITNESS: Would you repeat the question,
18 please.

19

20 (Question read.)

21

22 THE WITNESS: There is no description in the
23 chart, sir.

24 MR. CARR: Your Honor, would you direct the

1 witness to answer my question?

2 THE COURT: Doctor --

3 THE WITNESS: Well, I have.

4 THE COURT: -- please respond to the question.

5 THE WITNESS: Would you read the question?

6 THE COURT: The question dealt with the entire
7 record. The question dealt with the entire record. Please
8 answer the question.

9 THE WITNESS: No, there's no indication in the
10 record.

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

13 MR. CARR: Yes, your Honor.

14 THE COURT: We'll take a short recess at this
15 time. The admonishments I gave you earlier will apply
16 during this break also. Court is in recess.

17

18 (Short recess.)

19

20 MR. HEINEMAN: Your Honor, may Counsel approach
21 the bench for a minute, please.

22 THE COURT: Sure.

23

24

1 (The following proceedings were had at the bench
2 out of the hearing of the jury:)

3
4 MR. HEINEMAN: Your Honor had mentioned something
5 about today handling this voir dire situation on the juror,
6 on Mrs. -- what's the lady's name? I've forgotten.

7 THE COURT: McCann.

8 MR. HEINEMAN: Mrs. McCann.

9 THE COURT: I hadn't planned on doing it today.
10 We've been sort of delayed. Unless there's some objection,
11 we'll take it up Wednesday.

12 MR. HEINEMAN: In that connection, your Honor, Mr.
13 Craven has asked me if it would be possible for Mr. Carr to
14 file his brief on Tuesday and we take up the other issue on
15 Wednesday, the question on the voir dire of the jury with
16 respect to the newspaper article and that sort of thing.

17 MR. CARR: I won't be able to do that.

18 THE COURT: As far as the timing, I'm not going to
19 order him to file it tomorrow. I've asked him today as soon
20 as he can. You're in no way prejudiced by the amount of
21 time. The position I took the other day is still my
22 position.

23 MR. HEINEMAN: With respect to the voir dire of
24 the single juror, what time of day do you want to do that?

1 Do you want to do it before Court starts, or when do you
2 want to do it?

3 THE COURT: Let's see who is around at what point
4 in time. The morning break probably.

5 MR. HEINEMAN: Okay.

6
7 (The following proceedings were had in the
8 presence and hearing of the jury:)

9
10 Q (By Mr. Carr) Doctor, we were on the subject of
11 Johnathan Hurley, and I have been -- and is there anything,
12 sir, in the record as you have it to support then a
13 statement that his problems have always cleared with time;
14 and if so, what is it, sir?

15 A Sir, I'm not sure I have the isolated pieces of
16 information that you're referring to.

17 Q I'm referring to your records, sir, of Johnathan
18 Hurley that you made on examination of him in 1979. It's
19 marked Plaintiff's Exhibit 1737.

20 A Yes, sir.

21 Q And what is that, sir, on what page does it
22 appear?

23 A Well, I think if one looks at page 226 --

24 Q No, that's the number, Doctor. That's the

1 identification number.

2 A I'm sorry. If one looks at page 17 -- right -- 17
3 and 18, there are a number of changes between '53 and '79,
4 which I think are evident. He's not tired anymore, he's
5 not nervous anymore, he's not depressed anymore, he doesn't
6 recognize, perhaps, the parathesia --

7 Q I'm sorry, your voice is dropping, Doctor. I
8 can't hear you.

9 A He doesn't have parathesia. This is on page 18.
10 He claims that he may be dizzy on occasion. A man 86 years
11 old is actually entitled to that. He indicates that he
12 still has some muscle and joint pain. But I think with the
13 history of arthritis that he has, one has to take into
14 consideraion the fact that this arthritis is at the age of
15 86. This man is not disabled, that the pain that he
16 attributes to the explosion, but having arthritis, I would
17 say that age 86 he was doing very, very well.

18 Q Now, Doctor, I didn't ask you whether or not he
19 was doing very, very well. My question was is there
20 anything in the record to support a conclusion that his
21 problems have always cleared with time. Now you suggested
22 that he hasn't checked the nervousness problem, but he has
23 checked the sleeplessness problem, has he not, sir?

24 A Sleeplessness?

1 Q Yes.

2 A Yes, he has.

3 Q He has checked the muscle pain problem, has he
4 not, sir?

5 A He has.

6 Q He has checked the joint pain problem, hasn't he,
7 sir?

8 A Yes, he has.

9 Q Now he tells you after that check that it started
10 -- that a result of the muscle pain and the joint pain are
11 arthritis that started after the explosion, does he not,
12 sir?

13 A Yes, he does.

14 Q And he refers you then to the pain that started
15 after the explosion back in 1949, does he not, sir?

16 A I believe he does.

17 Q And he tells you -- and he told you in '49 that he
18 had had no problems until the explosion, did he not, in
19 which he's developed pain, then in the right hip and both
20 feet; isn't that correct, sir?

21 A I'm not sure I have the same place that you do,
22 Mr. Carr.

23 Q What exhibit are you looking at, Doctor?

24 A I'm looking at the 1737.

1 Q All right. 1737 --

2 A Isn't that it?

3 Q On page 17, and he tells you that his arthritis
4 started after the explosion, on page 8 he says muscle aches
5 and pains, arthritis started then, that is at the time of
6 the explosion, does he not, sir? And isn't he telling you
7 in this report, sir, that he still has the pains that
8 started after the explosion; isn't that what he's telling
9 you, sir?

10 A Well, on page 8, sir, he only indicates that the
11 muscle pains started then, that is after the explosion --

12 Q No. He says muscle aches and pains --

13 A Yes.

14 Q -- started then.

15 A Right.

16 Q He says arthritis started then, doesn't he, sir?

17 A Yes, that's right.

18 Q Or rather the person writing this down interprets
19 what he says as saying the muscle aches and pains, arthritis
20 started then; correct, sir?

21 A No. I think that whoever did this would be
22 quoting Mr. Hurley.

23 Q They wrote down what he said, and that's what he
24 said?

1 A Arthritis, yes.

2 Q No. He said, quote, he wrote down muscle aches
3 and pains, dash, arthritis started then; correct, sir?

4 A I think he was quoting Mr. Hurley, sir, yes.

5 Q And he tells us in Exhibit 1701, your 1953 report,
6 that he developed pains following the explosion, did he not,
7 sir?

8 A Yes, he did.

9 Q Now he's telling us in this 1979 report that he
10 still has the pains that started at the time of the
11 explosion, is he not, sir?

12 A According to this, the way it's stated here, yes.

13 Q Now, Doctor, that is a problem that he had then
14 and that problem did not clear with time, did it, sir?

15 A Yes, sir, it could have cleared with time.

16 Q Doctor, it may have, it could have, but it did
17 not, did it, sir? He's telling you in '79, isn't he, sir,
18 that he's got the same problem that he had in '49?

19 A He thought so, sir, yes.

20 Q That's what he's telling you, isn't it, sir?

21 A He thought so, yes.

22 Q Do you believe him, sir? Do you believe that he
23 is having pain and that he had that pain all that time, sir?

24 A I think we would have to make a judgment about the

1 some --

2 Q Excuse me, Doctor. My question is did you believe
3 that he was telling you the truth about the pain that he
4 had?

5 A He was telling us the truth, but we have to make a
6 judgment about it, sir.

7 Q Well, did you decide that he was lying about the
8 pain?

9 A No, sir.

10 Q Did you decide that it was an imaginary pain?

11 A No.

12 Q Or did you decide that he did have pain?

13 A No. But in '68 he could have had arthritis and
14 pain.

15 Q Doctor, I'm perfectly aware of that. You made
16 that point. But my question is, sir, he told you in 1953
17 that his pain problem started with the explosion, did he
18 not, sir?

19 A He said that, sir.

20 Q And he said in 1953 that he still has those
21 problems in 1953, didn't he, sir?

22 A To some degree, sir.

23 Q Doctor, he said his present complaints consist of
24 insomnia, pain in hips, thighs and feet, involuntary

1 twitching of muscles of arms and legs, didn't he, sir?
2 That's not to some degree. He's telling you he's got these
3 problems, isn't he, sir?

4 A He also said, sir, the eruption and pains have
5 regressed considerably during the past year, the sentence
6 just before that, sir.

7 Q Well, Doctor, that's what your person writing it
8 down, sir, said, there's been continuous and steady
9 regression of all skin lesions and non-cutaneous symptoms.

10 A That is what Mr. Hurley told the doctor, sir.

11 Q He still has the problems in '53, doesn't he, sir?

12 A But much less, sir.

13 Q Doctor, my question is doesn't he still have the
14 problems in '53.

15 A He has pains and the chloracne, but at a much
16 lesser level, sir.

17 Q Doctor, is the answer to my question yes, as he
18 stated on page 51, his present complaints, he still has
19 pains in hips, thighs and feet, involuntary twitching of
20 muscles of arms and legs? Was he still having those
21 problems in '53, Dr. Suskind?

22 A He was still having some of those problems in '53,
23 sir.

24 Q Those problems are talking about some of those

1 problems is the pains, is it not, sir?

2 A Yes, as he described it.

3 Q And, Doctor, those pains he was still having in
4 '79, wasn't he, sir, as he described it?

5 A As he described it, sir.

6 Q Those problems as he described it did not resolve
7 with time, they did not clear with time, did they, Dr.
8 Suskind?

9 A Well, several problems did, sir.

10 Q I understand that, Doctor.

11 A But a large number of them did, sir.

12 Q Doctor, please let me finish my question. The
13 statement in the AMA is that these problems have always
14 cleared with time. Isn't that what you all said at the
15 time, sir?

16 A That's what the AMA report read at the time, in
17 1981, sir.

18 Q All right, Doctor. These problems of Mr.
19 Hurley's, they did not all clear with time, did they, sir?

20 A In the case of Mr. Hurley they did, sir.

21 Q Did he not continue to have aches and pains in
22 '79?

23 A Yes, but not as a result --

24 Q That were the same aches and pains that he said he

1 had in '49 and '53?

2 A Correct.

3 Q You believed him to be telling the truth, didn't
4 you, sir?

5 A I do, indeed.

6 Q Doctor, then he is having those problems, is he
7 not, sir?

8 A If you are referring to pain alone, he indicates,
9 yes, that he was having problems at age 86, yes.

10 Q Is the answer to my question yes, he was still
11 having the same problems that he had in '49 and '53?

12 A Yes, sir, he said they were the same problems.

13 Q That problem did not resolve, did it, sir?

14 A He said it didn't resolve.

15 Q Well, did you believe him?

16 A Yes, we did.

17 Q All right. Then you believed that they did not
18 resolve; isn't that right, sir?

19 A Not necessarily.

20 Q Well, Doctor, either you believed him or you did
21 not believe him.

22 A We believed him. But we have to interpret what we
23 said in view of his age and our examination.

24 Q Doctor, if you believed him, that means in your

1 judgment he was still having the pain that he complained
2 about in '49 and '53; isn't that right, sir?

3 A He was still having the problem, a problem of
4 pain.

5 Q And that problem had not cleared with time, had
6 it, sir?

7 A No.

8 Q All right. Doctor, he also had a nerve sensation
9 problem in '49 and '53, did he not, sir?

10 A Yes.

11 Q Doctor, he had abnormal nerve problems in '79, did
12 he not, sir?

13 A He had some sensory problems in '79, sir.

14 Q So that problem did not -- he had the problem in
15 '49, he had the problem in '53, he had the problem in '79,
16 did he not, sir?

17 A That particular problem he had in '79 as well,
18 sir.

19 Q And that did not clear with time, did it, sir?

20 A No, it did not.

21 Q All right. Doctor, I'd now like to direct your
22 attention to Lonnie Hurley. That would be Exhibit 1738.
23 While we didn't have any additional medical on Johnathan
24 Hurley from Monsanto, we do have additional medical on

1 Lonnie Hurley from Monsanto.

2 MR. HEINEMAN: Objection, your Honor. That's just
3 not accurate. I can demonstrate it to the Court.

4 THE COURT: Gentlemen, let's approach the bench.

5

6 (The following proceedings were had at the bench
7 out of the presence and hearing of the jury:)

8

9 MR. HEINEMAN: I've got down here --

10 THE COURT: Wait 'till he comes up.

11 MR. HEINEMAN: I've got 78 pages.

12 MR. CARR: That is all post '79, Counsel.

13 MR. HEINEMAN: But you didn't say that in your
14 statement in front of the jury.

15 MR. CARR: Let me correct it.

16 MR. HEINEMAN: No, no.

17 THE COURT: Wait a second. We went through this
18 same thing again up here before on the record, if you revise
19 it, as far as the 1979 cut-off date.

20 MR. HEINEMAN: I don't know if that's accurate.

21 THE COURT: That's right. You didn't on the other
22 one either.

23 MR. HEINEMAN: I know he has plant medical records
24 which have been given to him in hard copy and have been

1 given to him --

2 THE COURT: That's not the point.

3 MR. HEINEMAN: Oh, yes, it is, your Honor.

4 THE COURT: That's not the question.

5 MR. HEINEMAN: The one type of document he's not
6 giving this witness is plant medical records.

7 MR. CARR: I don't have them, Counsel.

8 MR. HEINEMAN: He does have plant medical records.
9 They've been given to him.

10 THE COURT: This is the third time I'm going into
11 this. Revise your statement. Let's go.

12

13 (The following proceedings were had in the
14 presence and hearing of the jury:)

15

16 Q (By Mr. Carr) Doctor, to correct any impression
17 that I may have made, on Johnathan Hurley, the records that
18 we have, we have no records on him, no medical records on
19 him from Monsanto up to mid 1979. All right. And now I'm
20 giving you Lonnie Hurley's medical records. Could you mark
21 this as an exhibit.

22

23 (Plaintiffs' Exhibit 1770 was marked for
24 identification by the court reporter.)

1 Q (By Mr. Carr) Doctor, I'll hand you what's been
2 marked Plaintiff's Exhibit 1770, and represent to you that
3 those are the medical records up to mid 1978 that we have
4 received from Monsanto relaing to Lonnie Hurley. Could I
5 have four tabs?

6
7 (Plaintiffs' Exhibits 1771, 1772, 1773 and 1774
8 were marked for identification by the court
9 reporter.)

10
11 Q (By Mr. Carr) Doctor, I hand you what's been
12 marked as Plaintiffs' Exhibit 1771, which should be the tab
13 numbered 1 that you have there; 1772, which should be the
14 tab numbered 2 that you have there; 1773, which is the tab
15 numbered 3 that you have there; and 1774, which should be
16 the one that's on the second page of that exhibit, which
17 should be the tab numbered 4 that you have there.

18 Your Honor, I'd like to offer this exhibit into
19 evidence, it should be 1770, I believe.

20 THE COURT: All right. Any objections?

21 MR. HEINEMAN: May I see it? Your Honor, may we
22 have a running objection with respect to the allegation
23 about these being all the records, number one; number two,
24 on the foundation issue as well, lack of foundation.

1 THE COURT: I'll incorporate what was argued
2 before. It's admitted over objection.

3 MR. CARR: Your Honor, I'd like to pass these
4 exhibits, 1771, 2, 3, and 4 to the jury.

5 THE COURT: Fine, you may do so.

6 Q (By Mr. Carr) Dr. Suskind, 1771 shows that Mr.
7 Hurley had acute cellulitis and lymphangitis and phlebitis
8 in 1978.

9 A That's as the diagnosis reads in this exhibit,
10 sir.

11 Q It also in the history and the physical exam part
12 points out that he had been exposed to 2,4,5-T, does it not,
13 sir?

14 A That's what it says, yes.

15 Q And, Doctor, Exhibit 1772 -- this was a 1978
16 record. 1976 record, that is Plaintiffs' Exhibit 1772,
17 shows a cellulitis problem of the left foot at that time,
18 does it not, sir?

19 A That's what it shows, sir.

20 Q No history of injury to the foot, redness of the
21 middle three toes, and admittedly possible cellulitis with
22 the left foot, and this diagnosis was that he did have
23 cellulitis of the left foot; isn't that correct, sir?

24 A That's what it reads, sir.

1 Q Doctor, Exhibit 1773, dated 1955, shows, does it
2 not, that he has chloracne type abscess of the left foot and
3 lymphangitis then and --

4 A That was that doctor's diagnosis, sir.

5 Q And that was the diagnosis in 1955?

6 A That was that doctor's diagnosis, sir.

7 Q My question was that was the diagnosis in 1955,
8 wasn't it, sir?

9 A That was the diagnosis which is recorded in this
10 record by the doctor.

11 Q Is that an answer to my question, yes, that was a
12 diagnosis in 1955?

13 A Yes. That was the diagnosis given here, sir, yes,
14 sir.

15 Q According to the diagnosis he had the same problem
16 in 1978, did he not, sir, in '75 and in '78?

17 A It would seem to be similar, yes, sir.

18 Q That is not a problem that cleared with time, did
19 it, sir?

20 A It could.

21 Q Doctor, he had it as late as 1978, 23 years after
22 1955. It was not a problem that cleared with time, did it,
23 sir?

24 A If you are asking did he have it repeatedly, yes,

1 sir, he had it repeatedly.

2 Q No. My question is, sir, this problem was not a
3 problem that always cleared with time, was it, sir?

4 A This is a problem that could clear with time. I
5 wasn't referring to lymphangitis.

6 MR. CARR: Your Honor, would you direct the
7 witness to try to refrain from argument with me and to
8 answer my question.

9 MR. HEINEMAN: Objection, your Honor. May Counsel
10 approach the bench?

11 THE COURT: Yes, you may.

12

13 (The following proceedings were had at the bench
14 out of the hearing of the jury:)

15

16 MR. HEINEMAN: The premise that Mr. Carr is
17 working on here is that those problems mentioned in the AMA
18 article are the ones that cleared with time.

19 MR. CARR: It's not just those problems.

20 MR. HEINEMAN: That's what the article says.

21 MR. CARR: But the plain implication --

22 MR. HEINEMAN: Oh, go on.

23 MR. CARR: May I finish then?

24 MR. HEINEMAN: Well, you interrupted me.

1 MR. CARR: Well, then finish.

2 MR. HEINEMAN: The article talks about certain
3 kinds of problems clearing with time. The article doesn't
4 talk about venereal disease. The article doesn't talk about
5 a whole slew of other problems that these people may have
6 had over a period of time. It talks about certain problems
7 clearing with time. The article doesn't say anything about
8 this problem, and I object to it. It's misleading to the
9 jury. It's misleading to the witness, and I'm sure
10 intentionally so, and it has nothing to do with it. If the
11 premise of this line of examination is based on the AMA
12 article, then we ought to stick to the things that the AMA
13 article refers to in that portion that he's referring to.

14 MR. CARR: Your Honor, I didn't know that I was
15 obligated to stick to any scenario, any scheme that Counsel
16 wants me to. My premise of my cross examination is that
17 this doctor and Monsanto has represented to the world,
18 beginning back in 19 -- well, whenever it was, whenever the
19 first exhibit came out, in 1973, that the problems that
20 these men had in Nitro went away with time and only very few
21 had problems associated with the spill, they all got well
22 and that's a premise that the AMA is operating. The rest of
23 my cross examination is that when you get damaged by dioxin,
24 it does not clear up with time, the problems do not go away,

1 they stay for their lifetime.

2 THE COURT: Objection is overruled.

3

4 (The following proceedings were had in the
5 presence and hearing of the jury:)

6

7 THE COURT: Doctor, please answer the question
8 that was asked of you. I don't think your last answer was
9 responsive to the question.

10 THE WITNESS: All right. This problem does clear
11 with time, sir.

12 MR. CARR: Your Honor, I submit --

13 THE COURT: Doctor, that was not responsive.
14 Please read the last question back to the witness.

15 THE WITNESS: Thank you.

16

17 (Question read.)

18

19 THE WITNESS: Yes, this is a problem that does
20 clear with time, sir.

21 Q (By Mr. Carr) Doctor, my question is did this
22 problem -- was this a problem that cleared with time in the
23 case of Lonnie Hurley?

24 A From the records I have here, sir, he had it

1 repeatedly.

2 Q Could you answer my question, Dr. Suskind.

3 A From these records he had it -- it didn't clear up
4 until -- well, he had an episode as late as 1976, yes, sir.

5 Q An episode as late as 1978, Dr. Suskind.

6 A Or 1978, sir, yes.

7 Q So it was not a problem that cleared with time.
8 It continually recurred over those years, did it not?

9 A Which is characteristic of lymphangitis, sir.

10 Q I agree it's a characteristic. It's a problem in
11 the case of Mr. Hurley that did not clear with time; isn't
12 that correct, sir?

13 A In this instance he had it repeatedly, sir, yes.

14 Q The answer to my question is yes, it did not clear
15 with time?

16 A In this instance, in this instance, from 1973 to
17 1978 he had repeated episodes.

18 Q He had it from 1955, Doctor, not '73. From 1955.
19 That's the date of the first record you have, of Exhibit
20 1773.

21 A He had an episode in 1973. I mean 1955, sir.

22 Q And it is a problem that in this instance with Mr.
23 Hurley's problem did not clear with time, did it, sir?

24 A From these records, yes, he had it repeatedly.

1 Q Now, Doctor, 1774 is also from the Mount Sinai
2 Medical records. It shows, does it not, sir, that he still
3 has the things listed there on that first page, the fatigue,
4 the weakness in the legs, the nervousness and the insomnia,
5 and on the next page muscle fatigue?

6 A The insomnia he didn't have at the time of that
7 examination, sir. And that nervousness he didn't have at
8 the time of the examination. He had weakness of the legs at
9 the time of that examination. It does unfortunately
10 indicate that he had a disc operation in 1972, which could
11 explain the weakness of the legs.

12 Q Doctor, he said he had the weakness of the legs
13 beginning in 1949, did he not, sir?

14 A He did, indeed. That's what he said.

15 Q Did he have a disc operation in 1949?

16 A No. He had the disc operation in '72. This is
17 '79, sir.

18 Q He tells us here, sir, does he not, sir, that the
19 weakness started in '49 and it continued on through the
20 present time, doesn't it, sir?

21 A It only says that he had it in '49, and it's
22 currently active. It doesn't say that it continued.

23 Q Doctor, they're asking for problems and when they
24 first noted the problem, aren't they, sir?

1 A Correct, sir.

2 Q And that is the clear meaning that what problem
3 did you have, when did it start and do you still have it;
4 isn't that right, sir?

5 A It asks whether you still have it as well, yes,
6 sir.

7 Q Doctor, your examination in 1979, you confirmed
8 that he's still having these problems, did you not, sir?

9 A I would have to look at my records, sir, which I
10 don't have here. I don't have them with me.

11 Q 1738, could you give that to him. If you would
12 look at pages 17 and 18, Doctor. Are you there, Doctor?

13 A I am, indeed, sir.

14 Q Do you see the complaints of sleeplessness and
15 muscle pain on page 17? Do you, sir?

16 A Yes, I do, sir.

17 MR. HEINEMAN: Your Honor, excuse me. Objection.
18 Could Counsel approach the bench?

19 THE COURT: Sure.

20

21 (The following proceedings were had at the bench
22 out of the hearing of the jury:)

23

24 MR. HEINEMAN: Your Honor, I object to this, what

1 Mr. Carr is suggesting to this witness. The document, you
2 see the --

3 THE COURT: Which one?

4 MR. HEINEMAN: This is the one we're talking
5 about, 1738. The document has an asterisk next to
6 sleeplessness. It also has an asterisk next to muscle pain.
7 At the bottom since his back operation.

8 MR. CARR: There's no asterisk next to that. It
9 says since back operation, it's nothing to do with
10 sleeplessness or muscle pain. Since back operation left leg
11 feels numb, something, while working. It has nothing to do
12 with sleeplessness or muscle pain.

13 MR. HEINEMAN: What in the world would the
14 asterisk relate to?

15 MR. CARR: I don't know. It's your exhibit, not
16 mine.

17 THE COURT: The objection is overruled. Let's
18 proceed.

19
20 (The following proceedings were had in the
21 presence and hearing of the jury:)

22
23 Q (By Mr. Carr) Doctor, on the next page you see
24 the complaint of muscle weakness in the limbs?

1 A There's no indication there of when it started,
2 sir.

3 Q Doctor, could you just please answer the question?

4 A Yes. Yes. I see it, sir.

5 Q You have the problems that he complained of in
6 1953, Doctor, and I don't want to go back to that record all
7 the time. He is currently complaining about muscle weakness
8 in the limbs, is he not, sir?

9 A Yes, sir.

10 Q And he's also complaining about always tired and
11 fatigued, is he not, sir?

12 A That's been checked, sir, yes, sir.

13 Q He's also complaining about nervousness, isn't he,
14 sir?

15 A Yes.

16 Q And on page 24 he tells us that he's had this
17 nervousness, that he's nervous and irritable for the past 30
18 years, doesn't he, sir?

19 A He told the physician that.

20 Q And that 30 years would take it back to 1949,
21 wouldn't it, sir?

22 A That's what he told the physician, sir.

23 Q Doctor, are these then -- are these problems of
24 Mr. Hurley's problems that have always cleared with time?

1 A I would say in this instance, yes.

2 Q Doctor, did he have the problems of fatigue that
3 started, and nervousness and irritability that started in
4 1949?

5 A Yes, sir.

6 Q Does he still have the problems of nervousness,
7 irritability and fatigue in 1979?

8 A Uncertain, sir.

9 Q Sir?

10 A I'm uncertain about that.

11 Q Did he not say that he did, sir?

12 A He said that he did, sir.

13 Q Do you have any evidence to support a conclusion
14 that he did not have these problems in 1979? If so, please
15 point it out to me, sir.

16 A Yes. Under the diagnosis on page 25, sir.

17 Q On page 25?

18 A Yes. The diagnosis given by the physician, this
19 man is in good general health and the only significant
20 problems is limited to the skin, according to the comments,
21 and the physician's judgment is that there is some increase
22 in nervousness, but medication is not necessary. That is
23 the judgment of the physician.

24 Q Doctor, just on that point alone, the physician

1 says that he's got increased nervousness, does he not, sir?

2 A He said he had some increased nervousness, which
3 was the --

4 Q Doctor, isn't that -- you're not going now on what
5 he said, you're now going on what a physician found, sir.
6 My questions have been related to what the person says is
7 wrong with him, not what one of your doctors or Monsanto's
8 doctors have said. I have limited my, hopefully, my
9 questions to what the man's symptoms are.

10 A Okay.

11 Q Now, Doctor, he said that he had nervousness that
12 started in 1949, did he not, sir?

13 A Right.

14 Q And he said that in 1953, he said that in 1979,
15 did he not, sir?

16 A On page 24 the doctor has, on physical
17 examination, checked no, which means that he didn't find any
18 neuropsychiatric problems, and some increase in nervousness
19 is a complaint, sir.

20 Q Doctor, what kind of nervousness and irritability
21 can you show on a physical examination?

22 A The way the individual behaves. Like in Mr.
23 Farley, sir, he appeared depressed and the physician had in
24 the examination a statement that there was a flat or

1 depressed affect. He looked depressed. In this instance
2 the doctor has nothing under whether this man looked nervous
3 or not. But he does say in his comments that there is some
4 increased nervousness. That's the complaint. But
5 medication was not required. That's the comment of the
6 physician. We have to take that at face value, sir.

7 Q Doctor, we don't -- we take what the physicians
8 says at face value, but we don't take what the patient says
9 at face value; is that the way you look at it, Dr. Suskind?

10 A Well, one is a subject --

11 Q Excuse me, Doctor. Is that the way you look at
12 it?

13 A No, that's not the way we look at it.

14 Q The man told you that he was nervous and irritable
15 and had been for 30 years, since the exposure.

16 A He told the interviewer that, sir. He didn't tell
17 the doctor that.

18 Q No, Doctor, that's what was said to the person
19 that did the physical examination, if you'll look at that on
20 page 24.

21 A Right.

22 Q That is not your interviewer, that's the doctor.

23 A That's right, sir.

24 Q That's not the interviewer, is it, sir?

1 A He told the interviewer as well.

2 Q Doctor, that is not the interviewer, is it, sir?

3 A That's the doctor, sir.

4 Q Which is not the interviewer; correct, sir?

5 A It's not the person who administrated the
6 questionnaire, that's true.

7 Q Is it true that the statements made on pge 24 were
8 made by the doctor and not made by the interviewer?

9 A No, they were made by the patient.

10 Q Doctor, the entry made on page 24 was made by the
11 doctor, was it not, sir?

12 A The entry was made by the doctor, yes, sir.

13 Q And he wrote down, did he not, under the column
14 neuropsychiatric, nervous and irritable past 30 years, no
15 medication, didn't he say that, sir?

16 A He did, indeed.

17 Q And then right next to it there's a column for
18 physical examination; isn't there, sir?

19 A Right.

20 Q Sir?

21 A Yes.

22 Q And the physical examination includes the
23 neurological examination, does it not, sir?

24 A Right. And also observation as to the behavior.

1 Q Excuse me. Doctor, my question is the physical
2 examination includes the neurological, doesn't it, sir?

3 A Yes, it does.

4 Q Is there a test you can give on a physical exam,
5 sir, for nervousness?

6 A Yes, one can observe.

7 Q Doctor, you indicated in Farley's, in Farley's
8 case, sir, there was some indication in the physical
9 examination that the man was flat.

10 A Had a depressed affect, I believe.

11 Q Doctor, if you will, the affect means what, sir?

12 A It means that the individual is very, usually slow
13 speaking, and doesn't show any emotion whatsoever and looked
14 depressed. That's on page 25, sir.

15 Q That arrow, Doctor, with an arrow down means he
16 looked depressed?

17 A No, it's on page 25, sir.

18 Q I know, oh, on page --

19 A It says decreased affect. Decreased affect on
20 page 25. On page 24 there is an arrow which shows decreased
21 affect, and the neurological is negative, but the history
22 apparently taken by the doctor demonstrated that he did have
23 episodes of depression.

24 Q Yes. And was there any such report like that,

1 Doctor, for Lonnie Hurley?

2 A No. There was a -- there was a history of
3 nervousness and irritability, but when the examination was
4 actually done the doctor simply checked no, which meant that
5 he didn't observe anything abnormal.

6 Q Doctor, are you telling us, sir, that you can
7 diagnose that a man has not been nervous and irritable for
8 30 years by looking at the man or conducting a physical
9 examination of the man?

10 A No, not for 30 years, sir, but you can tell
11 whether the man is nervous at the time of the examination.

12 Q Doctor, did you believe that the doctor said that
13 he was nervous all the time?

14 A No. The history as taken by the doctor reads
15 nervous and irritable past 30 years.

16 Q Doctor, I understand that. I can read. My
17 question is did you understand that the man said he was
18 nervous all the time?

19 A No.

20 Q Doctor, your own doctor found that he was nervous,
21 did he not, sir?

22 A No, sir.

23 Q Doctor, look at page 25. He made the comment, his
24 findings as that there was some increased nervousness, did

1 he not, sir?

2 A I believe he was referring to the history, sir.

3 Q Oh, Doctor, this is on the page where he has
4 abnormal findings, physical examination, diagnosis,
5 impression and comments.

6 A Okay.

7 Q These are the comments of the doctor, aren't they,
8 sir?

9 A Correct.

10 Q He comments medical problems pretty well limited
11 to skin, some increased nervousness, but medication not
12 required; isn't that what he said, sir?

13 A That's what it says, sir.

14 Q Doctor, does that indicate to you that the man's
15 nervousness has gone away and that he doesn't have it?

16 A It indicates to me that the doctor didn't observe
17 it, though.

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

19 A Yes. Yes.

20 Q That indicates to you that the nervousness has
21 gone away?

22 A Yes, sir.

23 Q So you believe then that this man was lying when
24 he said he was nervous and had been nervous for 30 years; is

1 that correct, sir?

2 A No, I don't believe so.

3 Q Do you believe he was telling the truth?

4 A I believe he thought he was telling the truth.

5 Q Do you believe that he was telling the truth, sir?

6 A I believe he thought he was telling the truth,
7 sir.

8 Q Doctor, if he thought he was telling the truth, he
9 was telling the truth as he knew it, was he not, sir?

10 A He believed he was telling the truth, yes, sir.

11 Q And he believed he was nervous, didn't he?

12 A Yes, but the doctor did not observe it, sir.

13 MR. CARR: Your Honor, would you direct the
14 witness to quit volunteering statements. My question wasn't
15 as to what the doctor observed. My question was what the
16 witness --

17 THE WITNESS: Yes, sir.

18 THE COURT: Doctor, it was a clearly delineated
19 question. Please direct your response to the question asked
20 of you.

21 Q (By Mr. Carr) Doctor, the man said he was nervous
22 and said he had been nervous for 30 years.

23 A That is correct, for the past 30 years. He didn't
24 say continuous, sir.

1 Q Doctor, can you interpret it in some manner other
2 than he's had it for the past 30 years?

3 A I'm taking it at face value, sir.

4 Q And at face value how do you take that other than
5 reading nervous and irritability for the past 30 years?

6 A One can be --

7 Q Interpret that for me in some way other than he's
8 had it for the past 30 years.

9 A One would interpret this as during a period of 30
10 years he was nervous and irritable.

11 Q One time?

12 A But it doesn't mean to say it was continuous.

13 Q All right. You think he was nervous once, this
14 means he was nervous once in the past 30 years, or could
15 mean that, Doctor?

16 A Oh, no. No. I don't believe that.

17 Q Doctor, if you look on page 18 he also puts down
18 current nervousness, past nervousness, and that it started
19 in 1949, doesn't he, sir?

20 A That's what he says, sir, yes.

21 Q Do you believe that Mr. Hurley is incapable of
22 determining whether or not he's been nervous for the past 30
23 years, Dr. Suskind?

24 A No, I don't believe he's incapable.

1 Q Do you believe that an ordinary person is capable
2 of knowing whether or not he had been nervous or not,
3 different from the way he was before the explosion?

4 A Yes, I believe so.

5 Q And, Doctor, he told you that he had developed
6 nervousness in 1953. He told you he developed the
7 nervousness, did he not, sir? Did he not, sir?

8 A Yes, I believe he did.

9 Q And you said then that it was one of his current
10 problems, did you not, sir? Page 12 of the 1953 report, Dr.
11 Suskind.

12 A Yes.

13 Q Did you put down there that you didn't believe
14 him, that he was just nervous once since 1949, or did you
15 consider at that time, take it to be the truth, when he said
16 that he had developed nervousness following the spill and
17 that he's still nervous?

18 A I can answer that question by --

19 Q Doctor, please answer it forthrightly and
20 directly, if you would, sir. Did you believe, did he tell
21 you that he developed it after the spill and that he had it
22 in '53?

23 A Can you read the previous question? I'd like to
24 answer that first, sir.

1 THE COURT: Doctor, answer the question that was
2 asked of you last, please.

3 THE WITNESS: Now?

4 THE COURT: Yes.

5 THE WITNESS: Okay. Would you repeat that
6 question, please.

7

8 (Question read.)

9

10 THE WITNESS: Yes. I believed him, yes.

11 Q (By Mr. Carr) And, Doctor, he had that same
12 problem according to his judgment, Doctor -- strike that.
13 Was there any indication in the 1953 report that the
14 physician found that he was or was not nervous or did the
15 physician put down what the man said he complained of and
16 developed?

17 A I believe that the physician said that he had a
18 continuous eruption. There's a summary of it on page 35.
19 Fatigue, nervousness, pain in the legs, and all the symptoms
20 are regressing.

21 Q Doctor, do you believe that you've answered my
22 question? What do you think I asked you? Did I ask you if
23 the symptoms were regressing, Doctor? What did I ask you?

24 A You asked me whether or not he had the symptoms in

1 1953.

2 Q No, Doctor. What I asked you was whether or not
3 the doctor had made a finding that the man was nervous in
4 1953.

5 A I believe he stated that he had a nervous
6 complaint in 1953.

7 Q That's right, Doctor. My question is did he make
8 a finding that he was nervous in 1953?

9 A I don't believe the doctor recorded it in that
10 way, sir.

11 Q Well, Doctor, my question is did he make a finding
12 in 1953 that the man was nervous?

13 MR. HEINEMAN: Objection, asked and answered.

14 THE COURT: Objection is overruled. It's not.

15 THE WITNESS: There's nothing in the abnormal
16 clinical findings which relate to nervousness, sir.

17 Q (By Mr. Carr) So is that a no to my question, Dr.
18 Suskind, that he did not make a finding of nervousness in
19 1953?

20 A He didn't record one, sir.

21 Q Doctor, did he make a finding of nervousness in
22 1953?

23 A I can't tell you. All I can go by is this report,
24 sir. I don't know what the individual records show.

1 Q Did he record a finding of nervousness in 1953?

2 A An oral?

3 Q Did he record a finding of nervousness in 1953?

4 A He did not, sir.

5 Q And you accepted at that time in the absence of
6 any finding the man's statement that he was nervous, didn't
7 you, sir?

8 A We did.

9 Q Now, Doctor, in 1949 -- 1979 rather, the man makes
10 the same statement, does he not, sir?

11 A Yes.

12 Q And you are now not willing to accept his
13 statement; is that correct, sir?

14 A No.

15 Q That is not correct? Are you willing to accept
16 his statement in '79 that he's nervous and has been that way
17 since 1949? Are you willing to accept that, Doctor?

18 A There are two parts of that question, sir. I'd
19 like to answer them separately.

20 Q Doctor, are you willing to accept the statement
21 that he made the statement that he was nervous in 1949?

22 A Yes.

23 MR. HEINEMAN: Objection. Objection to the
24 interruption of the answer.

1 THE COURT: I think the question was being
2 revised.

3 THE WITNESS: Go ahead, sir.

4 Q (By Mr. Carr) Doctor, he made that statement, did
5 you accept that statement as true in 1979?

6 A No.

7 Q Now, Doctor, what in the record do you have that
8 supports your disregard of his statement that he's been
9 nervous, that he is nervous since 1949, that you'll
10 disregard that in 1979, but you accept what he said in 1953
11 on the same point?

12 MR. HEINEMAN: Object, it's been asked and
13 answered.

14 THE COURT: Objection is overruled. It's not.

15 THE WITNESS: This was a different kind of
16 examination, sir.

17 Q (By Mr. Carr) Doctor, did you understand my
18 question?

19 A Yes, I did, sir.

20 Q Will you answer my question, sir, please.

21 A Would you repeat the question.

22

23 (Question read.)

24

1 THE WITNESS: The fact that in the record under
2 the neuropsychiatric findings there's no indication, and the
3 doctor had a good opportunity to observe these people,
4 because this was a thorough examination, there's no
5 indication that he was nervous, sir.

6 Q (By Mr. Carr) Doctor, but he had to offset that,
7 did he not, the doctors comments that there was some
8 increased nervousness?

9 A I believe he was referring to the --

10 Q Doctor, does he not put in his comments some
11 increased nervousness?

12 A He does, indeed.

13 MR. HEINEMAN: Objection. He interrupted the
14 answer.

15 THE COURT: Objection is overruled.

16 THE WITNESS: Yes, he does, sir.

17 Q (By Mr. Carr) That is his finding, isn't it, sir?

18 A No, that is his -- he refers to his history of
19 nervousness and irritability.

20 Q Doctor, he makes no reference to a history there,
21 he's talking about medical problems, is he not, sir?

22 A If you were referring to the findings, sir, then
23 he would have had something on page 24 under findings.

24 Q Doctor, he was not a psychiatrist. He did not

1 examine him for nervousness. There is no place in any of
2 these records for a finding of nervousness or no
3 nervousness, is there, sir?

4 A There is an opportunity for the doctor --

5 Q Could you answer my question, sir?

6 A Yes, there is.

7 Q Where is there --

8 A There's an opportunity for the doctor on
9 examination in doing a behavioral examination to indicate
10 yes or no, and in this instance it was no.

11 Q And this doctor indicated that in the section on
12 physical examination, neuropsychiatric, sir.

13 A Yes, sir.

14 Q There was absolutely no psychiatric or
15 psychological exam given, was there, sir?

16 A There was an opportunity to talk with the
17 individual --

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

19 A Not as a psychiatrist would do a psychiatric
20 examination, sir.

21 Q Doctor, his statements, his comments on this page
22 entitled abnormal findings, and calling for comments, says
23 medical problems are pretty well limited to skin. That's
24 his judgment, isn't it, sir?

1 A Right.

2 Q Isn't he saying there in his judgment the medical
3 problems are pretty well limited to the skin?

4 A He says that, sir.

5 Q And he also says some increased nervousness, but
6 medication not required, doesn't he, sir?

7 A He got that from the patient.

8 Q Excuse me, Doctor, could you answer that question.

9 A He says that, sir, yes, sir.

10 Q He says that in his comment section, does he not,
11 sir?

12 A Yes.

13 Q Now, Doctor, I'd like to next refer to the case of
14 David F. Milam, if you would, sir. Would you give the
15 witness Exhibit 1739, please. Do you have 1739 in front of
16 you, Doctor?

17 A I do, sir.

18 Q Doctor, does Mr. Milam have problems in 1979 that
19 he associates with the exposure that took place in the
20 '50's?

21 A There was a history of problems which Mr. Milam
22 associated with the, according to the doctor, a dioxin
23 exposure.

24 Q Doctor, did he have problems like that in 1953?

1 in there pains both legs since 1950 2,4,5-I incident? Does
2 it say that, sir?

3 A That's the history he gave the doctor, yes, sir.

4 Q Does it also say there's nervousness and
5 depression with violent overtones in the '50's and '60's?

6 A Yes. But on page 18 he attributes it to niran.

7 MR. CARR: Your Honor, would you direct the
8 witness to answer my question.

9 THE COURT: Doctor --

10 THE WITNESS: Yes, sir.

11 THE COURT: -- just restrain yourself to the limit
12 of the question, please, no further.

13 Q (By Mr. Carr) Doctor, are these problems problems
14 that went away with time, or did he still have them
15 according to him in 1979?

16 A The pains in the legs, according to him, have
17 persisted.

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

19 A For the pains in the legs, sir, yes.

20 Q And these problems did not clear with time then,
21 did they, sir?

22 A I believe that in Mr. Nilam's instance that
23 they --

24 Q Doctor, would you answer my question?

1 A They did. They did.

2 Q They did clear with time?

3 A Yes.

4 Q Did you believe he was telling you the truth in
5 1979, Dr. Suskind?

6 A He said pains were not a problem at the present
7 time.

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

10 THE COURT: Doctor, please answer the question
11 that was asked you.

12 THE WITNESS: Yes.

13 Q (By Mr. Carr) Do you believe he was telling you
14 the truth in 1979, sir?

15 A Yes.

16 Q And he told you he had pains in both legs since
17 the 1950 2,4,5-T incident, did he not, sir? Did he not,
18 sir? Doctor, if you look to page 25, sir.

19 A Okay.

20 Q We've read it once or twice already. Doesn't he
21 say, doesn't the doctor say from the history he's had pains
22 in both legs since the 1950 2,4,5-T incident?

23 A Yes, he does.

24 Q Did you believe he was telling the truth then,

1 sir?

2 A I believed he was telling the truth, sir.

3 Q Then the problem did not go away with time, did
4 it, sir?

5 A By my judgment it did, since pain was not a
6 problem he said.

7 Q Doctor, you say because it is not a problem that
8 means it went away? Is that what you're saying, Doctor?

9 A Yes, I believe that the judgment on the part of
10 both the patient and the physician was that this was not a
11 problem.

12 Q Doctor, you are referring to page 23 when you say
13 not a problem, aren't you, sir?

14 A Right.

15 Q What you're reading there, back painful after
16 lying in bed, dash, not a problem at present?

17 A Right.

18 Q Isn't that what you're reading, sir?

19 A Right.

20 Q Now did you believe I was asking you about whether
21 or not he had a problem with his back being painful after
22 lying in bed, or did you believe that I was asking you about
23 the next entry, sir, aching pains in both legs worse with
24 exertion since early 1950's, parathesia on ventral surface

1 of thighs? Which do you believe I was asking you about when
2 I was asking you about the legs, Dr. Suskind?

3 A I believe that he was referring to the pain in
4 general when he talked about pain is no problem at the
5 present time.

6 Q Doctor, does that not read in its entirety, back
7 painful after lying in bed, dash, not a problem at present?
8 Isn't that what that says, sir?

9 A It also comes after aching pains in both legs.

10 Q Excuse me, Doctor, would you answer the question.
11 Your Honor, would you direct the witness to answer that
12 question.

13 A Yes, it does. Yes, it does.

14 Q After the entry of, quote, back painful after
15 lying in bed, not a problem at present, it states after
16 that, does it not, after that, doesn't it state, quote,
17 aching pains in both legs? Doesn't it say that, sir?

18 A It does.

19 Q After that entry, worse with exertion since early
20 1950's, parathesia on ventral surface of thighs? Doesn't it
21 say that, sir?

22 A That's what it says, sir.

23 Q Does it say that the aching pain in both legs is
24 not a problem at present?

1 A I assume that's what --

2 Q Excuse me, Doctor, does it say aching pain in both
3 legs not a problem at present, or does it say, quote, back
4 painful lying in bed, dash, not a problem at present,
5 period, end of quote? Doesn't it say that, Doctor?

6 A It comes right after that, sir, yes.

7 Q Doesn't it also say, sir, abnormal findings on
8 page 25, pains both legs since 1950 2,4,5-I incident?
9 Doesn't it also say on page 17 that he's had that problem
10 since -- the muscle pain since 2,4,5-I exposure? Doesn't he
11 say all those things, sir?

12 A From the history, from the summary of the history
13 that's what he says, sir.

14 Q Now, Doctor, his problems with his painful legs
15 did not go away, did they, sir?

16 A According to this history he indicated he still
17 had it.

18 Q Is the answer to my question that his problems
19 with his painful legs did not go away? Is that a yes, sir,
20 that the problems did not go away?

21 MR. HEINEMAN: Objection, asked and answered.

22 THE COURT: Overruled.

23 THE WITNESS: I believe I said he still had -- he
24 still complained that he had pain.

1 Q (By Mr. Carr) Doctor, that isn't what I'm asking
2 you. My question is his problems with his painful legs did
3 not go away, did it, sir?

4 MR. HEINEMAN: Same objection.

5 THE WITNESS: According to the interpretation it
6 didn't.

7 THE COURT: Mr. Carr, is this a good point to
8 break?

9 MR. CARR: Yes, your Honor.

10 THE COURT: Ladies and gentlemen, we will adjourn
11 at this time. As I told you before, we're not having court
12 tomorrow. We will have -- we will start again Wednesday
13 morning at 9:30. I would remind you, as I do on any
14 overnight break, that you're not to read, listen to, or
15 watch anything about this case in particular or subject
16 matter in general in any of the media, print or electronic.
17 Thank you for your attention and cooperation. Court is
18 adjourned.

19

20 (Court adjourned.)

21

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23

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1 STATE OF ILLINOIS)
2 TWENTIETH JUDICIAL CIRCUIT)
3 COUNTY OF ST. CLAIR)

5 I, KATHLEEN WATSON BRUNSMANN, one of the Official
6 Court Reporters, do hereby certify that the foregoing
7 transcript is a true and correct copy of said transcript.

9 DATED: March 24, 1986.

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Kathleen Walton Brunsman

KATHLEEN WATSON BRUNSMANN, RPR, CSR

Official Court Reporter

1 STATE OF ILLINOIS)
2 TWENTIETH JUDICIAL CIRCUIT)
3 COUNTY OF ST. CLAIR)

4

5 I, RICHARD P. GOLDENHERSH, CIRCUIT JUDGE, do
6 heraby certify that the foregoing transcript is a true and
7 correct copy of said transcript.

8

9 DATED: March 24, 1986

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RICHARD P. GOLDENHERSH, CIRCUIT JUDGE

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