

1 know that, don't you, sir?

2 A. Which report, sir?

3 MR. HEINEMAN: Your Honor -- wait a minute, Doctor.

4 Q. We'll bring the report next week, Doctor.

5 MR. HEINEMAN: May counsel approach the bench.

6 THE COURT: Yes, you may.

7 (At this time a conference was had at the bench out
8 of the hearing of the jury.)

9 MR. HEINEMAN: May I ask what the basis is for Mr.
10 Carr's statement that Dr. Nessman did not testify before the
11 Worker's Compensation Commission?

12 MR. CARR: I'll have the report here Monday.

13 MR. HEINEMAN: Cause I think that's not true.

14 MR. CARR: Well, I know it is true.

15 THE COURT: Fine. We'll take it up Monday when the
16 record is produced.

17 (The following proceedings were had in open Court.)

18 Q. Do you know who Dr. Nessman is, sir? Have you ever
19 met the man?

20 A. I don't believe so, sir.

21 Q. Have you ever read a document that lists Dr.
22 Nessman as a witness at the comp hearing?

23 A. No.

24 Q. Did you see him there personally, sir?

1 A. No, sir.

2 Q. Has anybody told you that he testified there?

3 A. No, I -- I -- I'm --

4 Q. Excuse me, Doctor. Has anybody told you that he
5 testified there?

6 A. It is my recollection --

7 Q. Doctor, my question is has anybody told you that he
8 testified at the comp hearing?

9 A. I don't believe so, except in 1953.

10 Q. Doctor, my question --

11 A. I'm sorry, not '53, '56.

12 Q. Doctor, my question is has anybody told you that
13 Dr. Nessman testified at the compensation hearings?

14 MR. HEINEMAN: Objection, asked and answered.

15 THE COURT: It was not. Answer the question,
16 Doctor.

17 A. I believe it was --

18 MR. CARR: Your Honor, the witness is not answering
19 my question.

20 Q. Doctor, my question is simple and clear. Has
21 anyone told you that Dr. Nessman testified at the
22 compensation hearing?

23 A. Yes.

24 Q. Who told you, Doctor?

1 A. I believe at the time --

2 Q. Doctor, you told you, Doctor?

3 A. At the time --

4 Q. Doctor, who told you that?

5 A. Let me finish, sir.

6 Q. Doctor, who told you that?

7 A. I'll try to answer it, sir.

8 MR. CARR: Your Honor, would you direct the witness
9 to answer my question to identify the person that told him?

10 A. It was my recollection that the --

11 MR. CARR: Your Honor, would you direct the witness

12 ---

13 THE COURT: Answer the question. It's asking for
14 the identity of--

15 A. The attorneys for Monsanto indicated at the time
16 that --

17 MR. CARR: Your Honor, would you -- Your Honor,
18 would you direct the witness to answer to question as to who
19 told him that Dr. Nessman testified at the compensation
20 hearing?

21 THE COURT: Doctor, you are so directed. Answer the
22 question as to who--

23 A. I didn't say testify, would testify.

24 Q. Doctor, my question is who told you that he

1 testified?

2 A. Nobody told me that he testified, sir.

3 Q. Have you seen a document that lists him as a
4 witness as having testified?

5 A. No, I have not, sir.

6 Q. Did you see him there yourself?

7 A. No, sir, I have not.

8 Q. Then, sir, you either have three ways of learning
9 something. Either you read it in a document, either somebody
10 tells you or you know it of your own knowledge, isn't that
11 correct, sir?

12 A. Yes.

13 Q. Now, you -- noone told you, did they, sir?

14 A. Yes, sir. I said --

15 Q. Who told you Dr. Nessman testified at the
16 compensation hearing?

17 A. I believe that --

18 MR. CARR: Your Honor, would you direct the witness
19 to tell me who told him.

20 THE COURT: Doctor.

21 A. I'm saying that the Monsanto attorneys indicated
22 that --

23 MR. CARR: Your Honor, would you direct the witness
24 to answer my question.

1 THE COURT: Doctor, you said earlier that they did
2 not testify, that they did not tell you that. Are you --

3 Q. Don't you recall that--

4 THE COURT: Doctor, answer the question as to who
5 told you that he had in fact testified. That is the question
6 that is being asked of you. If someone told you that, please
7 answer the question and identify the person.

8 A. My best recollection --

9 MR. CARR: Your Honor, would you direct the witness
10 to answer my question.

11 THE COURT: Doctor, answer the question. The
12 question is very clear. It's been repeated a number of times.
13 Please answer the question?

14 A. The Monsanto attorneys.

15 Q. Told you that, sir?

16 A. That he would --

17 Q. No, Doctor, you're misapprehending my question. I
18 didn't ask you that, did I, sir? I asked you who told you
19 that he testified?

20 A. I didn't say he testified.

21 Q. Doctor, my question is -- my question is, sir, who
22 told you he testified at the compensation hearing?

23 A. Nobody told me that he testified.

24 Q. Thank you, Doctor.

1 A. But that he would testify.

2 Q. Doctor, that may be what you were told.

3 A. That he would testify, and I made it quite clear,
4 sir, and you are -- you are --

5 Q. That may be what you were told. These attorneys may
6 have told you anything that he would testify --

7 A. You are attempting to misinterpret what I have said
8 continuously during this trial, sir, and I said previously
9 that I believed that he would testify, cause other physicians
10 did as well, and I made that clear yesterday, sir.

11 Q. Now, my question though is, Doctor, did he in fact
12 testify?

13 A. I don't know whether he did. I assume that he did.

14 Q. Doctor, I'm asking you for your knowledge, sir,
15 right?

16 A. I said I assumed that I did.

17 Q. Doctor, am I asking for your knowledge or for an
18 assumption? Doctor, isn't it a fact that you have no
19 knowledge that Dr. Nessman testified at the compensation
20 hearings?

21 A. Not that he testified, but that he might testify.

22 Q. Do you understand my question, Doctor?

23 A. Yes, sir.

24 Q. I'll ask you again. Isn't it a fact that you have

1 no knowledge that Dr. Nessman testified at the compensation
2 hearing?

3 A. That is true, sir.

4 Q. Thank you, Doctor.

5 A. At the present time.

6 Q. Now, Doctor, have you determined on any evidence
7 other than what you've seen, sir, that this Farley is a
8 neurotic, sir?

9 A. We've had no other opportunity to examine him, sir,
10 no.

11 Q. Then you made the decision that he is a neurotic
12 based upon what you read in his reports, is that right, sir.

13 MR. HEINEMAN: Objection, Your Honor. May counsel
14 approach the bench?

15 THE COURT: Yes, you may.

16 Q. Or have you made that decision, sir?

17 MR. HEINEMAN: Do you mind if we go up?

18 (At this time a conference was had at the bench out
19 of the hearing of the jury.)

20 MR. HEINEMAN: Mr. Carr continues to assert that
21 this witness has testified to things he has not testified
22 to. The witness testified that he did not know whether or
23 not the man was a neurotic, he couldn't say he was a
24 neurotic, because he didn't do any psychoanalytical tests on

1 him, and now Mr. Carr is using as a premise for his question
2 that you said the man was a neurotic, and he didn't. It's
3 false, it's misleading to the witness, and it's misleading to
4 the jury, and I object to it.

5 MR. CARR: I have nothing further to say, your
6 Honor. I think it's perfectly proper what I'm suggesting to
7 the witness.

8 THE COURT: Objection is overruled.

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

10 Q. Doctor, is there anything in the record to support
11 your belief that this man has imaginary complaints other than
12 the fact that he's depressed?

13 A. In this record, no, sir.

14 Q. In any record, Doctor?

15 A. Well, our recollection that --

16 Q. No, Doctor, I didn't ask you for your recollection,
17 did I, because I can't cross-examine your recollection, can
18 I? I asked you for the records.

19 A. You could if you wanted to.

20 Q. Then I would have to accept what you say as true,
21 wouldn't I, Dr. Suskind?

22 A. I hope you do accept what I say as true.

23 Q. But I don't, Doctor. Absolutely not.

24 A. That's too bad.

1 Q. Now, Doctor, if you don't mind, my question is,
2 sir, do you have a record, any record at all upon which you
3 base the judgment, your interpretation that Mr. Farley's
4 complaints were imagined other than the fact that he was
5 depressed?

6 A. Not in this record, sir.

7 Q. Is there any other record that you have? Have I
8 got all of the 1979 records that you have about Mr. Farley?

9 A. I believe you do.

10 Q. Then, Doctor --

11 A. I hope so.

12 Q. Is there anything in the records other than the
13 fact that he's depressed for you to say that his complaints
14 were imagined?

15 A. Not in the record as it stands, but we make a
16 judgment.

17 Q. Doctor, is there any record of which you are aware
18 about his 1979 condition other than this record that is in
19 front of you right now? Do you understand my question, Dr.
20 Suskind?

21 A. I do indeed, sir.

22 Q. Is there any record other than the record in front
23 of you that you have relating to Mr. Farley and his
24 condition, whether it be psychoneurotic, imagined, real or

1 unreal in 1979, sir?

2 A. Nothing except this record, sir.

3 Q. Thank you, Doctor. Now, is there anything in this
4 record other than the statement that he is depressed to
5 support your position that his complaints are imagined?

6 MR. HEINEMAN: Your Honor, it's been asked and
7 answered three times.

8 THE COURT: I don't think it's been answered.

9 A. This is the record as it stands, sir.

10 Q. Do you understand my question?

11 A. Sure I understand.

12 Q. Is there anything in this record other than the
13 fact that the man says he's depressed to support your
14 conclusion that his problems are imagined?

15 A. Nothing in this record, sir, except depression.

16 Q. Doctor, when you say this record, that indicates,
17 the jury might believe that there is some other record.

18 A. There is --

19 Q. There is nothing in any record of which you are
20 aware, Doctor, to support the -- your supposition that his
21 complaints are imagined other than the statement that he's
22 depressed, isn't that right, sir?

23 A. No, my recollection about his --

24 Q. Doctor, did you understand my question excluded

1 your recollection?

2 A. I did.

3 Q. Did you understand before that I don't want to use
4 your recollection, sir?

5 A. We have to use it to make judgments though.

6 Q. Doctor, I'm asking you to make a judgment on this
7 particular record that is in front of you, sir, of a man that
8 you saw seven years ago. Did you see him, by the way?

9 A. I did not see him.

10 Q. Doctor, you didn't even see the man. Did you have
11 any records other than this record, sir?

12 A. We consulted --

13 Q. Excuse me, Doctor. Not we, but you. Did you have
14 any record other than this record, did you have any
15 experience with Mr. Farley other than this record, sir, in
16 1979?

17 A. I cannot tell you, but I know that in many
18 instances we went to the --.

19 MR. CARR: Your Honor, would you direct the witness
20 to answer my question.

21 THE COURT: Doctor, the last part of what you said
22 was not responsive to the question.

23 A. There are other records that we consulted about all
24 of our subjects, sir.

1 MR. CARR: Your Honor, if there are other records, I
2 have asked and the Court has ordered that Monsanto produce
3 these other records and --

4 THE COURT: Gentlemen, could you approach the bench
5 please.

6 MR. HEINEMAN: Which ton of records that we
7 produced were these in?

8 THE COURT: Gentlemen, could you approach the bench.

9 (At this time a conference was had at the bench out
10 of the hearing of the jury.)

11 MR. HEINEMAN: Nitro records on these people, we
12 produced work records, medical records.

13 THE COURT: Have you -- whoa, whoa, whoa. Have you
14 produced records that were used in consultation to prepare
15 this record by Suskind?

16 MR. HEINEMAN: I don't know what he used. All I
17 know is we produced the medical records, the work records,
18 the work histories. They're all -- most of them are on the
19 microfilm.

20 MR. CARR: We are not going on any microfilm. Your
21 microfilms are impossible to read.

22 THE COURT: Are you telling me you don't even no
23 what he consulted?

24 MR. HEINEMAN: Come again?

1 THE COURT: Are you telling me as you stand here now
2 that you don't know what he consulted, what records he's
3 consulted?

4 MR. HEINEMAN: I don't know -- the only records I
5 know about that he consulted were -- in connection with the
6 '79 examination?

7 THE COURT: Yeah, '79 exam, what he just testified
8 about.

9 MR. HEINEMAN: Of course, this record that was
10 prepared during the examination.

11 THE COURT: Right.

12 MR. HEINEMAN: And to my best recollection work
13 histories and in plant medical records.

14 THE COURT: Have all those been produced?

15 MR. HEINEMAN: I think so.

16 MR. CARR: I can't --.

17 MR. HEINEMAN: Mr. Carr made a recent request and a
18 bunch of records --

19 MR. CARR: Yes, I've got a bunch of records this
20 past week.

21 MR. HEINEMAN: Right.

22 MR. CARR: Are you suggesting --

23 THE COURT: Wait. You mean more records have been
24 produced this week?

1 MR. HEINEMAN: He just made a new request.

2 THE COURT: That's not what I asked you. More
3 records have been produced this week?

4 MR. HEINEMAN: I think so.

5 THE COURT: What records were those?

6 MR. HEINEMAN: I don't know what records they are.

7 MR. CARR: They were records of some of these
8 people. Farley may-- there may be records pertaining to
9 Farley included, Your Honor.

10 THE COURT: When were they requested?

11 MR. CARR: They were requested again about two
12 weeks ago. They were requested about two weeks ago.

13 MR. HEINEMAN: The latest request about this
14 record, when was that made?

15 MR. NASSIF: That was made by -- made a motion for
16 all the records of the 53 people examined in --

17 THE COURT: I remember that. That was about two and
18 a half weeks ago.

19 MR. NASSIF: No, he made it on the Friday that you
20 came back from being sick, the first day that you were back,
21 and we didn't have the jurors present.

22 THE COURT: I think it was the week before that.

23 MR. NASSIF: We were missing the jury.

24 THE COURT: No, I think it was the week before

1 that.

2 MR. NASSIF: I remember that, cause I worked on
3 those documents. We had to get them shipped in here from
4 Nitro, West Virginia, and I called Mr. Carr Sunday night to
5 tell him we got the documents Sunday morning from
6 Charleston. I called him Sunday night and said we got these
7 documents at about 8:30. That was, I think, Monday of this
8 week that I gave them to him.

9 THE COURT: I want you to check to make sure that
10 there was nothing else he consulted other than those that you
11 have already produced. It's about a quarter to. Can you
12 wrap up the point that we can break?

13 MR. CARR: We can break now, your Honor.

14 THE COURT: Okay. Fine.

15 MR. NASSIF: We'll check on some of that other
16 stuff.

17 THE COURT: I'm going to have you come back, and
18 we'll talk about that

19 (The following proceedings were had in open Court.)

20 THE COURT: Ladies and gentlemen, we're going to
21 break for the day at this point, and we'll resume again
22 tomorrow -- no, we'll resume again Monday morning at ten
23 o'clock, as I stated earlier. I would remind you as I do for
24 any overnight break that you're not to read, listen to, or

1 watch anything about this case in particular or subject
2 matter in general in any of the media, print or electronic.
3 Thank you for your attention and cooperation. Have a good
4 weekend and I'll see you Monday. Gentlemen, could I see you
5 in chambers please.

6 (At this time the following proceedings were had in
7 chambers out of the hearing of the jury.)

8 THE COURT: What is the status on Dr. Nessman's
9 report that I ordered production on?

10 MR. NASSIF: We haven't-- We don't have it here in
11 St. Louis, but we requested that Charleston check and see,
12 check through the workmen's compensation records and see what
13 they have, and I hear that a Federal Express package has
14 arrived, and, you know, I'll go through that and see what's
15 in there, your Honor, but we did not have it here in St.
16 Louis at Monsanto, but we had them check in Charleston.

17 MR. CARR: What we have discovered is that there
18 was one copy of one report from Dr. Nessman attached to a
19 Motion for Summary Judgment filed by Monsanto in the Nitro,
20 West Virginia Federal Court case, and that's the only -- and
21 they did not supply us with that record, we got that record
22 from Paul Pratt, the motion that they filed for summary
23 judgment. So there are, and it is listed -- it is listed in
24 a section of that Motion for Summary Judgment, it's listed

1 from Monsanto's medical records, so they do have Nessman's
2 record, at least they had them as recently as whenever they
3 filed the Motion for Summary Judgment, which I think was in
4 '83.

5 MR. HEINEMAN: You mean in Charleston?

6 MR. CARR: In Charleston. So they have got these
7 records.

8 MR. NASSIF: Your Honor, we have produced a number
9 of records or we've had a number of records in the Nitro case
10 that were produced to Dr. Carnow, including the medical
11 histories of a lot of these individuals, of the Nitro
12 plaintiffs in particular, and we produced to Mr. Carr on a
13 constructive basis, as you know, a large group of documents
14 that have been produced in the Nitro case that Dr. Carnow
15 had.

16 THE COURT: I remember that.

17 MR. NASSIF: Secondly, we produced to Mr. Carr
18 several rolls of microfilm that I quite frankly, Your Honor,
19 have no idea how many documents are on there, so what we did
20 was we tried to determine if on those several rolls of
21 microfilms or in that constructive production to Dr. Carnow
22 Nessman's records are on there. We did not find, let's say,
23 to date we have not found them, so we asked Charleston to do
24 a similar kind of looking for it in case they had it, and all

1 I can tell you is that if we have, you'll have it.

2 THE COURT: Well let me ask you this.

3 MR. NASSIF: Give it to him pronto.

4 THE COURT: Wouldn't it -- when district court opens
5 up Monday morning --

6 MR. CARR: There was just one copy of one person,
7 Judge. There was nothing more than that.

8 MR. NASSIF: He's got that. I haven't seen that.

9 THE COURT: Oh, I see, just one report on one
10 person. I see.

11 MR. NASSIF: There is no-- we have not identified a
12 report, Judge, we have not identified a-- like a Susman-- a
13 Nessman report on like 50 people, we haven't found anything
14 like that, but whatever we have, I will give to Mr. Carr 8:30
15 Monday morning so he can look at it before Court starts at
16 ten o'clock.

17 MR. CARR: The report that we have Dr. Nessman-- I
18 deduced from the report that we have that Dr. Nessman gave
19 reports, individual reports on each of these workers that he
20 saw. The one that is attached to the Motion for Summary
21 Judgment is on a person named Jeffers, who's not part of the
22 36, but --

23 MR. NASSIF: See, Your Honor, that's the other
24 thing. We don't know if Dr. Nessman, I don't know if he

1 examined any of those people that were part of the 36
2 examined in 1953, so we've had a request from Mr. Carr for
3 records for those people who were examined in '53 to '79 for
4 that period, so I don't know if we got Nessman in that group
5 of boxes or if Nessman didn't examine any of those people.

6 MR. CARR: He's not in the records that you have
7 given us.

8 MR. NASSIF: I'm not saying he is, cause I looked at
9 those records, and I don't recall them, but I don't know who
10 Nessman looked at, Your Honor, to tell you whether or not it
11 had previously been requested.

12 MR. CARR: My request for the Nessman reports is
13 not related just to these 36.

14 MR. NASSIF: I understand that, and we're not
15 approaching it from that, but, Rex, I'm just saying it wasn't
16 in the last request necessarily that you gave, so I'm not
17 sure who Nessman looked at even to tell you, but I'm going to
18 do this over the weekend, your Honor. Again last weekend was
19 the documents that we produced on Monday morning. This
20 weekend I'll be working on this one to see what we have.

21 MR. CARR: On the microfilm do you have some kind
22 of index?

23 MR. NASSIF: We have.

24 MR. CARR: That you have given us --

1 MR. NASSIF: What I would only term as -- I can't
2 use that -- that's a four-letter word-- a doggone poor method
3 of tracking it that takes an awful long time.

4 MR. CARR: Because what you've given us is
5 worthless. We've got about, oh, perhaps 10 to 20 rolls of
6 microfilm that is just about everything. There is no way of
7 --

8 MR. NASSIF: You see, your Honor, that's the problem
9 in this case, and I'll give you an example of this.

10 MR. CARR: I can't locate anything except going
11 through every bloody reel unless Joe gives me the--

12 MR. NASSIF: Mr. Carr calls me up on the phone
13 Wednesday and says, calls somebody at the Coburn-Croft and
14 says we want two documents, if you don't produce them to us,
15 we're going to call the Judge, and of course, now he knows
16 that he can call me, and usually I don't think there's been a
17 time when I've told you I'm not going to give you something.

18 MR. CARR: What I said was if you're going to
19 resist the motion, if you have it and you're going to not
20 give it to me, let me know before noon so I can contact the
21 Judge and have a hearing on it. That's the message that I
22 left.

23 MR. NASSIF: You're right, you're right. That's the
24 message he left. I got that message, and it turned out that

1 one document he had gotten out of Dr. Suskind's briefcase
2 while Dr. Suskind was on the witness stand. The other
3 document we had produced to him three different times on the
4 microfilm, but you know how long it took me to find that out,
5 that it was on the microfilm? Four hours. So the system that
6 we have --

7 MR. CARR: The system that you have isn't worth a
8 damn.

9 MR. NASSIF: Ain't any better than what he's doing,
10 but we spent four hours to tell them that we did have it so
11 that's what I'm saying, Your Honor, there are a lot of
12 documents that he had and we're to find it.

13 MR. CARR: Having it on the microfilm is the
14 equivalent to not having it, as you well know.

15 MR. NASSIF: Well, Rex, you asked for the microfilm,
16 you didn't ask for the equivalent.

17 MR. CARR: I asked for the records and what you
18 gave me was the microfilm.

19 MR. NASSIF: That's what we had.

20 MR. HEINEMAN: You asked for the microfilm.

21 MR. NASSIF: I think you did, but that's all we
22 have.

23 THE COURT: I remember it was back in the jury room
24 before it became a jury room, and he asked for both the

1 records and the microfilm. You know, perhaps only one of them
2 was worthwhile, but I think he asked for both the documents
3 and microfilm, if I remember correctly.

4 MR. NASSIF: Your Honor, I can tell you that many of
5 the records we do not have other than on the microfilm. It's
6 my best recollection that we still call Charleston to get
7 hard copies on occasion, cause you're talking about an
8 enormous --

9 MR. CARR: I'm not quarrelling with that, Judge.
10 It's perfectly true. There would be no way they would have
11 occasion to keep all those records here. It would be --

12 THE COURT: Fine.

13 MR. NASSIF: That's the status.

14 MR. HEINEMAN: The obvious reason for that is that
15 Nitro is irrelevant to the Sturgeon case, and that's why we
16 don't have any of those documents here.

17 MR. CARR: You say it's irrelevant, but it's
18 becoming every day to become relevant, more and more
19 apparent.

20 MR. NASSIF: I'll get him what we have, your Honor.

21 THE COURT: You have your continuing objection
22 periodically renewed, but not waived. Now, I do -- I would
23 again request you to discuss with your witness the basic
24 components of testifying in Court since this witness is

1 consistently, continually and deliberately not following the
2 rules of testimony in this Court, and I really don't want to
3 put a 73 year old man in jail for contempt. There's no
4 question in my mind that he is in contempt, so I would, as I
5 know that you disagree with the rules that I have
6 promulgated, I have gathered that you have disagreed with
7 some of the interpretations that I have made. That does not
8 take away from the fact that the rules that I have
9 promulgated and interpretations that I have made have been
10 clear and consistent and I am ordering you as an officer of
11 the Court to admonish him to exercise the witness control
12 that I believe that you have as an experienced counsel and as
13 lead counsel in this case for that matter and get this
14 witness under some semblance of control, and you have a
15 weekend to do it in. I would appreciate your doing it.

16 MR. CARR: Your Honor, I would agree. It's
17 ludicrous for me to stand in front of the jury and flat out
18 argue with this man the way I been required to do. It's not
19 the way I like to try cases. The man comes from -- he's
20 arguing with the Court, trying to argue with you as to -- as
21 to the essence of your ruling, and I don't like it, and it
22 makes the case go so slow, and it's not a proper way to do
23 it, and I have no question in my mind but what Mr. Heineman
24 if he really wanted to, could say, look, you're hurting us in

1 in this case, you're hurting us with the Judge, and it's not
2 the proper way to do it. Just answer the questions and when
3 there's explanations, while I don't agree with what the Court
4 has said to us that you're not supposed to go into these
5 long, unresponsive statements, I'll bring that out Mr.
6 Suskind, if I were Mr. Heineman, I would say I'll bring that
7 out on redirect so, hold it, I'll be able to correct any
8 misimpressions that Mr. Carr has given the jury so restrain
9 yourself and just answer his questions. Now, that's what Mr.
10 Heineman could say to Dr. Suskind, and I'm positive it would
11 have some effect. I don't like to do what we've had to do
12 here today, just plain argue with the man. It's -- this case
13 is too arduous and too difficult for counsel to require me to
14 do that or the other alternative, require you to put the man
15 in jail or strike their pleadings or something of that sort.

16 MR. HEINEMAN: I hope the Appellate Court can see in
17 the record the sarcasm with which I'm going to respond to Mr.
18 Carr's remarks, how happy I am to have his paternal--

19 MR. CARR: Before you say it I am not being
20 sarcastic. I'm being as straightforward with you as I know
21 how to be.

22 MR. HEINEMAN: You are not being straightforward
23 with me.

24 MR. CARR: I most certainly am.

1 MR. HEINEMAN: Because you know as well as I do that
2 I follow the orders of this Court, and when the Court orders
3 me to do something, I do it.

4 MR. CARR: I have no knowledge that you followed it
5 at all. You can follow it lip service wise, which you may
6 do, Mr. Heineman.

7 MR. HEINEMAN: Well, I don't care what you think.

8 MR. CARR: That's apparent.

9 MR. HEINEMAN: So I'm just telling you as I have
10 told the Court that I follow the orders of this Court, and
11 when the Court orders me to do something, I do it, whether I
12 agree with it or not, and the Court knows that there are
13 times when I have expressed disagreement with what he's done,
14 and I go ahead and do it anyway. I have admonished this
15 witness as I have told the Court at the bench I have done,
16 and I will continue to do it, and I will obey this Order, so
17 I don't care to hear any of your remarks on the subject.

18 THE COURT: Let me ask you this. Are you -- taking
19 what you're-- you're an officer of the Court. Taking what
20 you said at face value, are you telling me then that you
21 cannot control this witness, and I have deal with him on that
22 basis?

23 MR. HEINEMAN: I'm telling you that I have done
24 your bidding.

1 THE COURT: Right, and I understand that, and I
2 accept that. Now, looking at the results, am I to assume now
3 since you have done what I've asked you to do, I gather from
4 what you're telling me that you can't control this witness
5 and that I have to deal with him accordingly on the basis
6 that you cannot control him. You have attempted to as I have
7 requested you to do, and he's just not going to do it. I
8 gather I'm to assume that or am I incorrect?

9 MR. HEINEMAN: What I'm telling you is that I'm
10 doing my best.

11 THE COURT: Right.

12 MR. HEINEMAN: To control him.

13 THE COURT: Right.

14 MR. HEINEMAN: And I think he's doing his best to
15 comply. I think that he gets caught up in the emotion of the
16 exchange, and he fires things off impetuously and then when
17 you chastise many, you know, he apologizes.

18 THE COURT: I don't -- I'm not saying that I don't
19 think that you think that. I don't buy that for a minute.
20 There have been repeated times when this witness has made an
21 unresponsive answer, made a nonresponsive answer, volunteered
22 things, and then has gone to the question, often unrepeated
23 and made the answer that the question calls for. That has
24 happened too many times within too fast a period of time for.

1 me to believe that he is just being caught up in the
2 emotion. I think he's doing it deliberately. From the
3 context that I've seen of his answers, from the timing that's
4 been involved in his answers, he has a pattern of
5 deliberately not responding to the question, deliberately
6 adding to his response that which he wants to say, and then
7 responding to the question, I -- perhaps perceiving that by
8 ultimately responding is the -- as the question calls for he
9 takes himself out of a zone of danger with this Court, but
10 it's happened too many times under too many circumstances in
11 which the emotion was controlled and too quickly for me to
12 believe that he has gotten caught up in the fire of the
13 moment and that he's not in control of his -- of either
14 himself or of his responses. I think he's too bright, he's
15 too well trained, and he's obviously not in the position
16 where he's -- he's doing that. I think it is deliberate. I
17 think he has the control. I think he's choosing the exercise
18 of his control in the manner, which is contrary to the order
19 of the Court. And taking as a given that you have followed
20 the orders of this Court to direct him as to how to proceed
21 as a witness in this courtroom, am I to take it that he's for
22 some reason out of your control and I have to deal with him
23 accordingly, cause he has not been complying with the orders
24 of this Court.

1 MR. HEINEMAN: I can't say that he's out of my
2 control, because when I talk with him about it, he agrees,
3 and he says, yes, I will do my best, I understand what you're
4 telling me. All right.

5 MR. CARR: But, Your Honor, he's hit upon a formula
6 now, he considers it a formula, and the Court touched upon
7 it, of giving the unresponsive part or the volunteered part
8 first and then after giving that statement saying, yes, in
9 response to the question. If I interrupt because the
10 question simply calls for a yes or no quite easily without
11 the explanation and without the unresponsive part and when I
12 interrupt the witness in his unresponsive part, counsel
13 challenges me and says let the witness finish his answer.
14 And there's been too many times this afternoon that this new
15 pattern has developed that instead of saying yes or no to the
16 questions, he gives the unresponsive, the volunteered part
17 and then says, ends up by saying yes, and I have to ask then
18 is that a yes to my question. Too many times that's occurred
19 for it not to be a device that he has hit upon to get around
20 the Court's admonitions.

21 MR. NASSIF: I would like to just add one thing,
22 your Honor. First of all, I think it was wrong of Mr. Carr to
23 indicate that he is being disrespectful to you. I do not
24 think Dr. Suskind has been disrespectful to the Court, and I.

1 do not think that there's any what I would consider to be
2 anything other than a 73 year old man, who's been a scientist
3 all his life, who's on the witness stand for the second time
4 under different court rules than he faced in Nitro, West
5 Virginia and who's having difficulty distinguishing what he
6 can and cannot do here versus what he was allowed to do in
7 Charleston, and I think he does have lapses. I think he has
8 memory lapses, obvious memory lapses and particularly in the
9 afternoon when it's difficult for him to follow. He does
10 have a hearing problem, although he denies that he has a
11 hearing problem, but he carries around--

12 MR. HEINEMAN: He refuses to admit to the hearing
13 problem.

14 MR. NASSIF: But he carries around a hearing device
15 in his pocket, so on occasion I believe that some of his
16 hesitation is more a result of the fact that--

17 THE COURT: I'm not worried about hesitation, the
18 hesitation doesn't bother me.

19 MR. NASSIF: I think though, Your Honor, he tends to
20 react to an answer not with any preconceived ideas but more
21 of he catches something and then he reacts, which is why I
22 think he interrupts a lot of Mr. Carr's questions, cause once
23 he picks it up he answers it. He's not hearing everything,
24 but sort of picks up what he can and then he fires off an

1 answer. I don't think that could be preconceived. The fact
2 that he interrupts Mr. Carr, he thinks he hears something,
3 Mr. Carr dropped his voice or he hears Mr. Carr sort of tail
4 down, and I think he believes that the question honestly in
5 terms of his abilities it's over and it's time to answer.

6 THE COURT: Are you telling me that I have to order
7 him to wear a hearing aid?

8 MR. NASSIF: Well, it might be a good idea.
9 Seriously, Judge, I think he would be embarrassed about it,
10 but it might be a very good idea for him to do it. I know
11 Mr. Carr has trouble sometimes knowing whether the doctor has
12 heard his question, especially late in the afternoon. This
13 afternoon he asked the doctor had a couple of times, and I'm
14 not sure the doctor heard his question. Mr. Carr asked him
15 several times, are you listening to me, are you hearing what
16 I'm saying.

17 MR. CARR: Your Honor --

18 MR. NASSIF: But the Doctor's pat answer to that all
19 the time is, yes. I'm not sure he in fact did hear what Mr.
20 Carr's question.

21 MR. CARR: I think that's not true, because each of
22 those instances he's there reading something, he's trying to
23 anticipate what I'm asking him. He's not even on the page
24 that I directed him to. Too many times that's occurred, and

1 I have to say are you looking at that page, and he's looking
2 at something else. No, he's-- but the hesitation doesn't
3 bother me. I have no quarrel at all no problem about his
4 hesitation in answering the question. That doesn't bother me
5 a bit. What bothers me is his unresponsive and volunteered
6 answers.

7 MR. NASSIF: I think part of that though, Your
8 Honor, once again, at least the interruptions of Mr. Carr's
9 questions is part of his hearing the tail off of an initial
10 question that Mr. Carr might be asking, and he may be
11 refining it as the Court has indicated, but I do believe that
12 that is part of the problem. I do not believe he's
13 disrespectful of this Court. I think every time the Court
14 has said something to him, he has been respectful in the
15 courtroom. I do think he has a tendency to get caught up in
16 the emotion, particularly when Mr. Carr, who has made it
17 perfectly clear to this witness that he does not believe that
18 this witness is telling the truth, he has told the witness
19 that, he has told the witness that he will not rely on his
20 recollection, and I think at times the witness honestly
21 believes that he's somehow being painted in the way that is
22 not truthful to the witness, is not accurate to the witness,
23 and I think there's some emotion--

24 MR. CARR: Your Honor, this has just come out this

1 afternoon that I have indicated that I didn't-- because he
2 challenged me to do it. That wasn't there before, and he
3 can't at all be using that, and his interrupting my questions
4 has just occurred recently. It didn't happen the first couple
5 of days. This is a device that he's learned. I am not asking
6 questions differently today than I have on other occasions
7 but he didn't interrupt my questions on other occasions to
8 fire out an answer. This is something that he just started
9 today.

10 MR. NASSIF: I disagree with that, Your Honor. I
11 believe the record will show that the Court has for several
12 days now instructed the witness to wait till the question is
13 --

14 THE COURT: I will order him to wear the hearing
15 aid. I want him admonished again and have this explained to
16 him again. If there isn't any change, I don't see any escape
17 from the conclusion that he's out of your control, and I will
18 have to deal with him accordingly. Because if wearing a
19 hearing aid will change his behavior, fine. You talk to him
20 in response to the Court's request, and he's wearing a
21 hearing aid so that he has a mechanical device to help him
22 hear completely all components of the question, and he
23 continues in this current conduct, then I will have to deal
24 with it accordingly as a witness who's doing it deliberately

1 and who's out of the control of counsel so --

2 MR. CARR: Your Honor, I'd like to additionally add
3 to the record that I don't agree with counsel's assessment
4 that the man is fatigued in the afternoon. He seems as fresh
5 to me and quite capable of handling himself throughout. Now
6 if in fact he is fatigued, and you note that he is, I
7 certainly don't want to cross-examine a witness who's
8 fatigued.

9 THE COURT: I have been watching him in the
10 afternoons. We have taken very long break in the middle of
11 the afternoon, because the practicality of taking a break
12 after each hour just isn't practical, the breaks get too
13 long, but I have taken a long break in the afternoon between
14 the sessions for the purpose of making sure he's not
15 fatigued, and I been watching that since he brought it up
16 when he was back here the last time. It's my impression that
17 he has not been, and I been watching him closely, so I don't
18 think that fatigue is a problem. I'm ordering him to wear
19 the hearing aid to take care of that problem, and you're
20 going to talk to him again and hopefully his behavior will
21 change next week.

22

23

24

1 STATE OF ILLINOIS)
2) SS.
3 COUNTY OF ST. CLAIR)

4 I, MARSHA SCHNIPPER, certify the foregoing to be a
5 true and accurate transcript of the testimony and proceedings
6 in the above-entitled cause.

7 Dated this ____ day of March, 1986.
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1 STATE OF ILLINOIS)
) SS.
2 COUNTY OF ST. CLAIR)
3
4

5 I, Richard P. Goldenhersh, one of the Judges in and
6 for the Twentieth Judicial Circuit, do hereby certify that
7 the foregoing transcript is a true and correct transcript of
8 the proceedings had in said cause.

9 Dated this ____ day of March, 1986.

10
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12 _____
13 RICHARD P. GOLDENHERSH, JUDGE
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1 Q. Didn't this AMA report go out to probably hundreds
2 of thousands of doctors throughout the country, everybody
3 that belonged to the AMA probably got a copy of this report,
4 didn't they, sir?

5 A. No, sir.

6 Q. Well, wasn't it sent out to the doctors, sir?

7 A. No, sir.

8 Q. How was it presented to the doctors?

9 A. It was presented first in a report such as this,
10 sir, which was available to the doctors on request, sir.

11 Q. Well, you didn't send it to them, they had to ask
12 for it, is that right, sir?

13 A. That was the policy of the AMA, sir.

14 Q. Excuse me, sir. Is that correct, sir?

15 A. I believe so.

16 Q. And it has been summarized and referred to on a
17 number of occasions, hasn't it, sir?

18 A. I believe so.

19 Q. And, Doctor, the -- you, of course, had an oral
20 input to this group as well that wrote this, didn't you, sir,
21 and when you contributed?

22 A. We discussed the manuscript, sir, yes.

23 Q. Now, are you responsible for the statement with
24 reference to these various problems sir, " these symptoms

1 have not been progressive and they have always cleared with
2 time"; are you responsible for that statement?

3 A. Where is that, sir?

4 Q. Excuse me, Doctor. Could you answer my question
5 please, sir.

6 A. I don't know, sir. You will have to give me the
7 quotation.

8 Q. Listen to the statement again, sir. Are you
9 responsible for the statement that these symptoms have always
10 cleared with time?

11 A. I will have to see that statement to make a
12 judgment if I said it their, sir.

13 Q. Doctor, you mean to say that you you don't know,
14 you wrote the article, you know what you said in other
15 instances, are you saying that you don't know that -- whether
16 or not you're responsible for that statement?

17 A. Sir, I would like to verify what you have said,
18 sir.

19 Q. Doctor, don't worry about verification. I'm asking
20 you whether or not--

21 A. Well, I want --

22 Q. -- You know that your responsible for that
23 statement.

24 A. I want to verify everything that you say, sir.

1 Q. Assume, Doctor, if you would --

2 A. I will not assume, I can't assume.

3 MR. CARR: Your Honor, would you direct the witness
4 to assume as I'm asking him to assume, that that statement
5 appears in the AMA summary.

6 Q. Doctor, if it appears there--

7 THE COURT: Wait a second.

8 Q. Are you responsible for it?

9 THE COURT: Doctor, you should so assume it, and
10 then answer the question that was asked.

11 A. I can't really tell you. I was a member of the
12 committee, but I would have to see the statement in order for
13 me to verify that that was said, sir.

14 Q. Doctor, I'm asking you, and the Court is directing
15 you to assume that it was said. Now, are you assuming that,
16 sir?

17 A. I am assuming it, sir.

18 MR. HEINEMAN: Excuse me, Your Honor. May counsel
19 approach the bench.

20 THE COURT: Yes, you may.

21 (At this time a conference was had at the bench out
22 of the hearing of the jury.)

23 MR. HEINEMAN: This Court has previously ordered
24 that we could not ask the witness to assume anything that

1 wasn't in evidence. To my understanding this document is not
2 in evidence.

3 THE COURT: The AMA report?

4 MR. CARR: It's not in evidence. They have cross
5 examined witnesses on it.

6 THE COURT: Was that statement ever read to the jury
7 in the course of the cross examination?

8 MR. HEINEMAN: Not to my knowledge.

9 MR. CARR: I have no idea. I don't know whether it
10 was or not. If the Court wants me to establish that it's in
11 the record, go ahead.

12 MR. HEINEMAN: I'd be happy if he admitted it. Can
13 we admit it?

14 MR. CARR: No way.

15 MR. HEINEMAN: Can we get the document admitted?

16 THE COURT: I don't remember what the objections
17 were frankly.

18 MR. CARR: Its not authoritative, it's not
19 peer-reviewed, your Honor. It's not in evidence for that
20 reason. It is a report that went out and was never
21 peer-reviewed and never published and nobody has considered
22 it authoritative.

23 MR. HEINEMAN: Well, I believe --

24 THE COURT: I don't remember. I assume that was the

1 basis on which I ruled.

2 MR. HEINEMAN: Your Honor, the testimony from Dr.
3 Kilgore was thta it was in fact in essence peer-reviewed by
4 virtue of a review process that was used with the document,
5 and he said that it was authoritative.

6 MR. CARR: Then you're back on the thesis that it
7 cannot be admitted into evidence except upon
8 cross-examination to impeach, counsel, or to point out so you
9 know these are documents, we been through this Wilson vs.
10 Clark any number of times. They can rely upon it, what they
11 want to do with it, they can rely upon it, they can say they
12 rely upon it, but that does not make the hearsay document
13 admissible into evidence.

14 THE COURT: Wait a second.

15 MR. CARR: Unless I offer it into evidence.

16 MR. CARR: That's been the Court's ruling
17 consistently.

18 THE COURT: Right, I understand. Establish,
19 whatever you were going to do as far as establishing it, but
20 also under Wilson vs. Clark I think that your use of it would
21 be proper also. The objection is overruled. Go ahead.

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

23 Q. Doctor, do you have your report with you, sir?

24 A. Which report are you talking about? There were two

1 reports.

2 Q. The AMA report.

3 A. Which one?

4 Q. The 1981 report, sir.

5 A. Yes, I do.

6 Q. Would you turn to Page 27, sir. The top of that
7 page is it stated summary, sir?

8 A. Yes, sir.

9 Q. Now, would you turn to the one, two, three, fourth
10 paragraph, sir? Are you there, sir?

11 A. Umhm.

12 Q. The last clause in that paragraph, does it not say,
13 sir, with regard to these effects of TCDD, the myopathy, the
14 neuropathy, depression, irritation and so forth, does it not
15 say these symptoms have not been progressive and they have
16 always cleared with time?

17 A. I see that statement, sir.

18 Q. Does it say that there, sir?

19 A. It -- on Page 27 it does read that way.

20 Q. Now, were you the author of that statement, sir?

21 A. I really can't say that I was. I would agree with
22 it, but I can't say that I was the author.

23 Q. Doctor, I didn't ask you that, did I, sir? I asked
24 you whether or not you were the author of it, and you don't

1 know whether you were or were not?

2 A. No, I was not the author of it. We reviewed it,
3 yes.

4 Q. Doctor, I thought you said that you were one of the
5 authors of the entire document?

6 A. I was one of the authors of the second report, sir,
7 the 1984 report, this one.

8 Q. You're not one of the authors of the '81 report?

9 A. I was one of participants, yes.

10 Q. Well, were you one of the authors or not, Doctor?

11 A. As a member of the committee we went --

12 Q. Doctor, without qualification. You either were or
13 you weren't. Were you?

14 A. We were responsible for what was in it, sir, yes.

15 Q. Is that answer a yes to my question that you were
16 one of the authors of the document?

17 A. It all depends what you mean by author, sir.

18 Q. Doctor, do you understand --

19 A. Did I write it? No, I didn't write it.

20 Q. Do you understand what the word author means?

21 A. I didn't write this report, sir.

22 Q. Did you write any part of it, sir?

23 A. No, we contributed --

24 Q. Doctor, did you write any part of the 1984 report?

1 A. I had a hand in writing the 1984 report.

2 Q. All right. Then you were one of the authors of the
3 1984 report, is that correct, sir?

4 A. Yes, sir, definitely.

5 Q. But you were not one of the authors of the 1981
6 report, is that correct?

7 A. I was an editor of that report, yes, sir.

8 Q. All right. Now, Doctor, you, however, participated
9 in it and if anything in it was untrue, you would have, of
10 course, mentioned it and deleted it, wouldn't you, sir?

11 A. Precisely.

12 Q. That was your obligation, wasn't it, sir?

13 A. Yes, sir.

14 Q. And you told the-- This report and it was also
15 summarized in the 1984 report as well, was it not, sir?

16 A. Not all of it, only some of it, sir.

17 Q. Some of it was summarized, wasn't it, sir?

18 A. Some of it.

19 Q. Doctor, this statement that the symptoms have not
20 been progressive and they've always cleared with time, the
21 statement with regard to they have always cleared with time
22 is not true, isn't it, sir?

23 A. No, it is true.

24 Q. Doctor, didn't we just demonstrate that these

1 workers have got these complaints in 1953, these symptoms?

2 A. We are in 1981, sir.

3 Q. Excuse me, Doctor.

4 A. We're in 1981, not 1953.

5 MR. CARR: Your Honor, could you direct the witness
6 to listen to my question.

7 THE COURT: Doctor, that was not responsive to the
8 question.

9 A. I thought it --

10 THE COURT: Listen to the question and answer that
11 and that alone.

12 Q. Doctor, did you not say in 1953, did you not find
13 in 1953 that 93 percent of the workers that you examined
14 continued to have these complaints?

15 A. No, sir, we didn't say that.

16 Q. Doctor --

17 A. We didn't say that in my report.

18 Q. Isn't it your interpretation of your 1953
19 examinations that 93 percent of these workers had these
20 complaints?

21 A. No, sir.

22 Q. Didn't you just tell us that, sir?

23 A. No.

24 Q. These 27 listed on this exhibit, sir, you did

1 interpret these workers to have these complaints?

2 A. Had complaints, sir.

3 Q. Didn't you, sir?

4 A. Had complaints.

5 Q. It was your interpretation that they had these
6 complaints, right, sir?

7 A. If -- according to your way of coding, sir.

8 MR. CARR: Your Honor, this is about 30 times that I
9 have had to go through and to establish again and again that
10 it is his interpretation as well.

11 Q. I demonstrated it yesterday, Doctor. I read from
12 the transcript where you said it was your interpretation. Do
13 you remember that, sir?

14 A. I do.

15 Q. And you did agree yesterday that it was your
16 interpretation of those records, didn't you, sir?

17 A. The report was my interpretation, sir, yes.

18 Q. Doctor, that isn't what I'm asking you.

19 THE COURT: Gentlemen --

20 Q. You know it's not what I'm asking you.

21 THE COURT: Gentlemen, could you approach the bench
22 for a minute please.

23 (At this time a conference was had at the bench out
24 of the hearing of the jury.)

1 THE COURT: This has been established a number of
2 times in the record and each time we go through it it just
3 kills more time until we get to the same point. I will allow
4 you to ask him to assume that it has been established from
5 there, cause otherwise this is never going to end, and I
6 think it's been clearly established on the record. You may
7 proceed on that basis.

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

9 Q. Doctor, I would like for you to assume that you
10 have testified in this case that you interpreted the record
11 relating to these 36 men and in your interpretation of these
12 records you concluded that 27 out of 29 men continued to have
13 one or more complaints relating to aches and pains of the
14 lower extremities, back, nervousness, fatigue, shortness of
15 breath and so forth. Would you do that, sir?

16 A. Yes.

17 Q. Now, assuming that to be true, Doctor, and you, of
18 course, would testify to the truth, wouldn't you, sir?

19 A. I believe I have told the truth all the time, sir.

20 Q. Doctor, you examined these men, some of these men
21 again in 1979, did you not, sir?

22 A. We did.

23 Q. And of these men that you re-examined in 1979 they
24 all continued to have the same complaints, did they, sir, the

1 same symptoms?

2 A. Some of them did.

3 Q. No, all that you examined that had the complaints
4 in 1953 continued to have the same problems, same symptoms in
5 1979, did they not, sir?

6 A. Again according to your method of --

7 MR. CARR: Your Honor --.

8 Q. Doctor --

9 A. That's an assumption.

10 Q. Doctor, don't plead with me, Doctor, just please do
11 your job and testify to the truth. Did you not say just this
12 morning, sir, when I showed you Exhibit 1734, that these men
13 continued to have the symptoms in the 1979 examination that
14 they had in the 1953 examination? Didn't you testify to --

15 A. They continued--

16 Q. Sir?

17 A. That they complained at that time.

18 Q. No, Doctor, you described those as symptoms this
19 morning, did you not, sir?

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

22 THE COURT: Yes, you may.

23 (At this time a conference was had at the bench out
24 of the hearing of the jury.)

1 MR. HEINEMAN: My notes specifically say from this
2 morning's examination that he called them symptoms in '49 and
3 '50, he called them symptoms in '53, and he called them
4 complaints in 1979, not symptoms in 1979. That's exactly
5 what he said, and there's --

6 MR. CARR: No, sir, not true.

7 MR. HEINEMAN: Well, you got notes?

8 MR. CARR: Sure we do.

9 MR. HEINEMAN: Are you clairvoyant?

10 MR. CARR: Yeah, we got notes.

11 MR. CARR: We have it that he described aching
12 muscle as a sign of a disease process in 1979.

13 MR. HEINEMAN: He asked him to assume that he had
14 it at that time. That is an absolute foul trick.

15 THE COURT: Wait a second, just a second. Objection
16 is overruled. Go ahead, Mr. Carr.

17 (The following proceedings were had in open Court.)

18 Q. Doctor, haven't we established that if something is
19 a symptom at one time it's also a symptom subsequently?

20 A. Depends on what kind of symptoms they are, sir.

21 Q. Do you recall we went through the aching muscle
22 process?

23 A. Yes, sir.

24 Q. And --

1 A. It could be objective or subjective.

2 Q. No, I think we established that the aching muscles

3 were always subjective, didn't we, sir?

4 A. That's synonymous with complaint, sir.

5 Q. Yes.

6 A. That's synonymous with complaint.

7 Q. Doctor, don't you really recall that we went

8 through and you agreed that they were symptoms in 1949?

9 A. If they're subjective complaints or subjective

10 symptoms, I agree.

11 Q. If it's -- a symptom can be subjective or it can be

12 objective, can't it, sir?

13 A. True enough. Fever is a symptom, is an objective

14 symptom.

15 Q. I'm sorry?

16 A. Fever, which you demonstrated is an objective

17 symptom.

18 Q. But pain is a subjective symptom, isn't it, sir?

19 A. Pain is a subjective symptom or a complaint.

20 Q. Well, it's a subjective symptom, isn't it, sir?

21 A. Or a complaint, yes.

22 Q. Is the answer to my question, yes, it's a

23 subjective symptom?

24 A. Yes, it is.

1 Q. Doctor, they had these subjective symptoms in '49
2 and '50, didn't they, sir?

3 A. No.

4 Q. Doctor, don't you remember we went through this
5 whole exercise, and you agreed that it was aching muscles in
6 '49 was a symptom? Don't you recall that, sir?

7 A. Yes, yes, indeed.

8 Q. These were symptoms in '49, weren't they, sir?

9 A. They were indeed.

10 Q. They were symptoms in '50, weren't they, sir?

11 A. Yes, sir.

12 Q. They were symptoms in '53, weren't they, sir?

13 A. They were bonafide or they were verified by
14 objective --

15 Q. Doctor, I'm not talking about verified. There was
16 no objective findings in 1953. What objective findings did
17 you as a physician make in 1953?

18 A. I didn't say '53, sir, I said '49 and '50.

19 Q. Doctor, but this morning you said they were
20 symptoms in 1953.

21 A. There were subjective symptoms or complaints, sir.

22 Q. Doctor, they were subjective symptoms in 1953,
23 weren't they, sir?

24 A. They were subjective symptoms in 1953 or

1 complaints, yes, sir.

2 Q. Thank you, Doctor. And they had these same
3 subjective symptoms in 1979, didn't they, sir?

4 A. Some of them complained, yes.

5 Q. Doctor, is that a yes to my question?

6 A. Yes.

7 Q. Yes. Doctor, these symptoms they had in '49,
8 subjective though they may be, they had them in '50, they had
9 them in '53, they had them in '79, didn't they, sir?

10 A. They may not be the same, sir.

11 Q. Doctor, they had the same symptoms, didn't they,
12 sir, pain in the muscles and aching?

13 A. Some of them complained of it, yes.

14 Q. Is that a yes to my question, sir?

15 A. It's a yes if they're complaints, sir, yes.

16 Q. No, the question is a symptom, sir. They had the
17 same symptoms of pain in '49 and '50 as '53 and '79, didn't
18 they, sir?

19 A. Not the same, no, sir.

20 Q. They didn't have the same?

21 A. No.

22 Q. Were they different pains, sir?

23 A. They had to be judged by --

24 Q. Excuse me, Doctor. I'm not asking you--

1 A. May I finish, sir?

2 Q. No, Doctor, I'm not asking you. I'm just simply
3 asking you did they not have the same symptoms of pain,
4 didn't they tell you in '49 and '50 and '53 and '79 that they
5 had pain in their muscles, sir?

6 A. They did indeed.

7 Q. If they had pain in their muscles, sir, on those
8 occasions, then that is indeed a symptom, isn't it, sir?

9 A. Yes.

10 Q. And, Doctor, if they had these symptoms in '49 and
11 '50 and '53 and '79, they can be an indication of a disease,
12 can't they, sir?

13 A. No, sir.

14 Q. They can't?

15 A. Nope.

16 Q. Doctor, you mean to say that pain in a muscle
17 cannot be a symptom of a disease?

18 A. Doesn't have to be.

19 Q. Doctor, I didn't ask you if it had to be.

20 A. I thought you did, sir.

21 Q. No, I asked you can it be a symptom, sir? Can it
22 be a sign of a disease?

23 A. It might be, sir.

24 Q. It can be, can't it, sir?

1 A. It might be, sir.

2 Q. Doctor, I want more than that.

3 A. I'm using my own doctor's judgment, and I'm saying
4 it might be, sir.

5 Q. Doctor, I'm asking you a hypothetical. Cannot pain
6 be a symptom of a disease?

7 A. It might be, sure.

8 Q. Is that a yes to my question?

9 A. It is.

10 Q. All right. Doctor, then pain can be a symptom of a
11 disease in all of these men, can't it, sir?

12 A. No, sir, not in my judgment.

13 Q. Doctor, I'm not asking you in your judgment in a
14 specific instance. I'm asking you cannot pain in the muscles
15 be the symptom of a disease?

16 A. Yes. You are referring to these people though.

17 Q. Doctor, these people had the problems in '49 and
18 '50 and '53 and the same symptoms of aching muscles and pains
19 in '79, didn't they, sir?

20 A. They didn't have to be the same, sir, no.

21 Q. I know they didn't have to be, but they had the
22 same symptoms, didn't they, sir?

23 A. They complained of the same problem.

24 Q. Which the complaint if they had it, sir, in '79, it

1 was a symptom, wasn't it, sir?

2 A. It was a complaint, sir.

3 Q. Doctor, if they have the pain in '79, it was a
4 symptom of a disease process, wasn't it, sir?

5 A. No, sir. We just got over telling you it could be.

6 Q. Well, I'll take that, Doctor, it could be. Now did
7 they have these problems in '79 or not? Did you consider
8 these people that told -- were telling you the truth in 1979
9 or did you consider they were lying?

10 A. We didn't consider that they were lying.

11 Q. All right. Then you considered they were telling
12 the truth, is that right, sir?

13 A. They might be telling the truth.

14 Q. Well now, Doctor, did you consider they were
15 telling the truth or not?

16 A. We took it at face value, sir.

17 Q. Then you took it that they were telling the truth,
18 is that correct, sir?

19 A. Yes.

20 Q. Then if they were telling you the truth, sir, then
21 they indeed had pain and aches in their muscles, didn't they,
22 sir?

23 A. Not necessarily.

24 Q. Doctor, if I tell you I'm having pain in my muscle,

1 and you believe that is the truth, then I'm having pain in my
2 muscle unless I'm lying to you, right, sir? Of course I
3 could be lying to you and you could believe it's the truth. I
4 could fool you, couldn't I, sir? I could be telling you I
5 got a pain in my muscle, and you could believe it, and it
6 could be a big falsehood, isn't that right, Dr. Suskind?

7 A. It might be.

8 Q. It could be, couldn't it, sir?

9 A. Could be.

10 Q. I could lie to you. I could tell you right now
11 that I got a cramp in my forearm or you could tell I got a
12 cramp, but if I told you my elbow aches or my muscle aches,
13 you have to either believe me or disbelieve me, correct,
14 sir? You either have to believe I'm telling you the truth or
15 you have to believe I'm lying.

16 A. I don't believe it's either or, sir.

17 Q. Oh, Doctor, if I tell you that I've got a pain in
18 my muscle, I'm either lying or I'm telling you the truth,
19 aren't I, sir?

20 A. Not necessarily.

21 Q. Tell me some other alternative.

22 A. People may believe that they have some pain, and
23 they may exaggerate, and they're still telling the truth, but
24 they may exaggerate.

1 Q. I'm not even talking about exaggeration.

2 A. I am though.

3 Q. But I'm not and I'm asking the questions. I'm
4 telling you to suppose with me, sir, if I tell you that I've
5 got a pain in my arm, now I could tell you I've got a severe
6 pain in my arm when in fact I got a mild pain, right, sir?

7 A. Umhm.

8 Q. Telling you that I got a severe pain when in fact
9 I've got a mild pain is an exaggeration, isn't it, sir?

10 A. That may be part of the exaggeration.

11 Q. Doctor, if I tell I have a pain, I either have one
12 or I haven't one.

13 A. It may be frequency of the pain, too.

14 Q. Doctor, I'm not even talking about frequency.

15 A. I am though.

16 MR. CARR: Your Honor, would you direct the witness
17 to assume what I'm asking him to assume.

18 THE COURT: Doctor, you are going beyond the
19 questions.

20 A. Okay.

21 THE COURT: Just answer the question with the
22 components that are in the question and no more.

23 Q. You believe these men in '79 were telling you the
24 truth, didn't you, sir?

1 A. Yes.

2 Q. And if they in fact had pain, if they in fact were
3 telling the fact, if they in fact were telling the truth,
4 that is then a symptom, isn't it, sir?

5 A. Could be a symptom, yes.

6 Q. Yes. Doctor, if that is a fact, then it is also a
7 fact that the symptoms did not go away with time, isn't that
8 correct, sir?

9 A. No, not really, because the '79 study was done for
10 another purpose, sir.

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

12 A. That's the truth.

13 Q. You asked the questions in '79, you asked it for a
14 scientific reason, you didn't ask it being idle, did you,
15 sir?

16 A. No.

17 Q. You asked it for a reason, do you have these pains,
18 these aches, did you not, sir?

19 A. Yes.

20 Q. A good valid scientific reason, right, sir?

21 A. Right.

22 Q. You wanted to find out whether or not these men had
23 symptoms that cleared with time, didn't you, sir?

24 A. No, sir, that's not what-- that's not the purpose

1 of the study.

2 Q. What was the purpose for that question?

3 A. The purpose of the study, sir--

4 Q. No, no, the purpose of the question, Doctor.

5 A. The purpose of question, sir, was to find out
6 whether or not this -- the group of exposed in the 1979
7 study, the people who were clearly exposed to either the
8 runaway reaction or the process of making 2,4,5-T were any
9 different with respect to their complaints of pain or fatigue
10 as compared with those who were not exposed.

11 Q. Doctor --

12 A. Clearly not exposed, that was the purpose of it,
13 sir.

14 Q. You wanted to find out whether or not these men had
15 pain that were exposed, didn't you, sir?

16 A. We wanted to find out, sir, whether or not there
17 was a difference.

18 Q. Doctor, could you listen-- Doctor, but before you
19 can establish whether there is or is not a difference you
20 have to find out if they are in fact having pain, don't you,
21 sir?

22 A. Having complaints of pain, yes, sir, and we did.

23 Q. Doctor, before you can find out and make any
24 analysis, you've got to first find out do they have pain,

1 right, sir?

2 A. Yes, sir.

3 Q. You found out that these men had pain, didn't you,
4 sir?

5 A. They complained, some of them complained of pain.

6 Q. Doctor, we've gone through this again.

7 A. But that wasn't the purpose of the study, sir.

8 Q. Doctor, please bear with me. I'll get to your
9 study, you can tell me the purpose of the study, but right
10 now what I'm attempting to do, Doctor, is to demonstrate that
11 what you told or what the AMA told the physicians of the
12 world wasn't true.

13 A. It was.

14 Q. Where you said they had always cleared with time.

15 A. They did.

16 Q. Did they clear with time in the case of these men
17 that are listed here?

18 A. It was our judgment that they cleared --

19 Q. Excuse me, Doctor. Did these symptoms in fact --

20 MR. HEINEMAN: Objection, he interrupted the
21 answer?

22 A. That's '53, sir.

23 THE COURT: Objection is overruled.

24 A. We're in '81 and '84. We're talking about a huge

1 amount of time passing, and if I said or I -- if the AMA
2 wrote that they cleared with time, indeed they did, sir.

3 Q. Tell me which of these men did the complaints of
4 pain clear with time, these men that are listed in 1730,
5 which of these--

6 A. That's '53, sir.

7 Q. Yes, Doctor. These men had these complaints in
8 1949 and 1950 and 1953. Now, tell me which of these men that
9 are listed in 1730 had their complaints of pain that cleared
10 with time?

11 A. In our judgment all of them did, in our judgment,
12 sir.

13 Q. Doctor, you've already told us that your
14 interpretation of these 10 or 11 men in 1979 was that they
15 had pain in their aches and muscles in their legs and their
16 arms, did you not, sir? Didn't you just tell us that, sir?

17 A. That's how you instructed me to check, sir.

18 Q. No, Doctor. No, Doctor, that's another point
19 altogether. Did you not just tell us that these men had
20 these symptoms in 1979 and that you believed they were
21 telling the truth?

22 A. Yes, we did.

23 Q. All right. And, Doctor, if they were having them,
24 they did not clear with time, did they, sir?

1 A. Yes, they did.

2 Q. In which man did they clear with time?

3 A. In all of them, sir.

4 Q. Doctor, have you got 1734 in front of you?

5 A. What's 1734, sir?

6 Q. The one that you just-- or 1754--

7 A. I got 34 right -- I have it right here.

8 Q. Do you have that in front of you, sir?

9 A. Yes, sir.

10 Q. Did the complaints of pain in the case of Charles
11 Arthur, did they clear with time?

12 A. In my judgment they did, sir.

13 Q. Then why did you report it --

14 A. In your judgment they did not.

15 Q. Why did you report it in 1979 in his -- why is it
16 reported in his questionnaire, sir, that he had pain?

17 A. That is a record, sir, not an interpretation.

18 Q. Yes, it is a record. Yes, Doctor, it is a record,
19 and you interpreted that, did you not, as that this man had a
20 truthful complaint symptom of pain, isn't what that you said,
21 sir?

22 A. It is checked off as pain, sir.

23 Q. Doctor, didn't you say that it's a symptom of pain,
24 that he in fact had pain, that you believed him?

1 A. Yes, we did.

2 Q. All right. Then he had this pain in 1979, didn't
3 he, sir?

4 A. I don't know.

5 Q. Doctor, he told you he did, and you said he was
6 telling the truth, didn't you, sir?

7 A. I hoped he was, but in our judgment--

8 Q. Excuse me, Doctor. You said, did you not, sir, that
9 he had the pain in fact, that he was telling the truth in
10 1979?

11 A. Yes, we did.

12 Q. Yes. If he had the pain in 1979, and he had the
13 pain in 1953, and he had the pain in 1949, it did not clear
14 with time, did it, sir?

15 A. Yes, it did, sir, in my judgment it did.

16 Q. Doctor, what you're doing is you're saying this man
17 is lying then?

18 A. No, I'm not.

19 Q. Did he have the pain or not, sir? Did he have the
20 pain or not, sir?

21 A. We reported that he complained.

22 Q. Did he have the pain or not, sir?

23 A. We reported that he complained of some pain.

24 Q. Doctor, did he have the pain or not?

1 A. There is no quantitation here.

2 MR. CARR: Your Honor, would you direct the witness
3 to answer my question.

4 THE COURT: Doctor, answer the question please.

5 A. He had pain, but not quantitated, sir.

6 Q. Doctor, I don't care about the quantity.

7 A. I do. I do. In my judgment I have to --

8 Q. My question, however, Doctor, is referred to
9 whether or not he does have the pain. He did have the pain
10 in 1979, didn't he, sir?

11 A. Yes, sir.

12 Q. Yes. And his pain --

13 A. He complained of pain.

14 Q. Doctor, now did he have it or not?

15 A. He complained of pain.

16 MR. CARR: Your Honor, would you--

17 Q. Doctor, I want you to assume that you said a half a
18 dozen times this afternoon that you believed he was telling
19 the truth and that he did in fact have the pain. Would you
20 assume that please, sir?

21 A. I am assuming, sir.

22 Q. Then if he had it, Doctor, he had it, didn't he?

23 A. He might.

24 Q. Doctor --

1 MR. CARR: Your Honor, would you direct the witness
2 to assume that he's said that in his opinion the man was
3 telling the truth and that the man in fact did have that
4 symptom of pain in 1979?

5 A. I am assuming.

6 THE COURT: You are so directed.

7 A. I am assuming that, sir.

8 THE COURT: Fine.

9 Q. Not when you say might, Doctor. You're not assuming
10 it if you say might, you're speculating, Doctor, you're that
11 it might be that he doesn't have the pain?

12 A. I'm interpreting, sir, and I have the right --

13 Q. You've already interpreted it, and your
14 interpretation is that the man was telling the truth in 1979
15 and that he in fact had this pain, that's your
16 interpretation, isn't it, sir?

17 A. It is a record of it, sir, yes, sir.

18 Q. Doctor, that is your interpretation, isn't it, sir?

19 A. Yes, sir.

20 Q. Yes, sir. And, Doctor, if he had the pain in 1979,
21 it was there, wasn't it, sir?

22 A. It could be, I'm not sure.

23 MR. CARR: Your Honor, would you direct the witness
24 to again assume that he had the pain in '79.

1 THE COURT: Doctor, you've got to follow the
2 assumption --.

3 MR. HEINEMAN: May we approach the bench, your
4 Honor?

5 THE COURT: Just a second. You have to follow the
6 assumption that I ordered you to make earlier.

7 A. I am doing that, sir.

8 MR. HEINEMAN: May we approach the bench?

9 THE COURT: Yes, you may.

10 (At this time a conference was had at the bench out
11 of the hearing of the jury.)

12 MR. HEINEMAN: Your Honor, my objection was Mr. Carr
13 inquired of this witness with respect to this subject. The
14 witness talked about even though he believed the men, that
15 they could be exaggerating, that he doesn't know for sure
16 whether they have the pain or not. He took what they said at
17 face value, and he marked it down that they had, they
18 complained of pain, and he didn't have any reason to
19 disbelieve them, but he said they could be exaggerating, so
20 he didn't know for sure whether they had the pain or not. Mr.
21 Carr is a --

22 THE COURT: Wait a second, wait a second. There's a
23 problem with what you said. He tied the possibility of
24 exaggeration to the quantification of pain and not to the

1 existence of pain, whether they had a severe pain or a
2 moderate pain and exaggerated it to that from mild or
3 whatever. He put it in the basis of quantification and not
4 the existence of pain, and that's how he has consistently
5 treated the question, exaggeration.

6 MR. CARR: He also said that he believed the man
7 was telling the truth about his pain, he also said that.

8 MR. HEINEMAN: Right, he says he believes the man.

9 MR. CARR: If it is the truth, then it is the fact
10 that the man had pain.

11 MR. HEINEMAN: Oh, Mr. Carr, you're playing word
12 games, and you know you are.

13 MR. CARR: Everything we've got, sir, is with words
14 as you know.

15 MR. HEINEMAN: He believed the man, but he doesn't
16 know for sure whether the guy actually has it, and that's the
17 problem with this subjective symptom, and you know that as
18 well as the doctor.

19 MR. CARR: That is not the problem here, counsel,
20 because he said he believed it, that it was the truth.

21 THE COURT: I don't think it is the problem here.
22 Your objection is overruled.

23 (The following proceedings were had in open Court.)

24 MR. CARR: Would you read the last question to the

1 witness.

2 (Court reporter read back the last question.)

3 A. I think I answered the question, sir, I said it
4 might be.

5 MR. CARR: Your Honor --

6 THE COURT: Doctor, I don't think that that is
7 responsive to the question.

8 A. Well, I'm not sure what is needed, sir.

9 THE COURT: Please answer the question.

10 A. Is it a yes or no?

11 THE COURT: Doctor, answer the question yes or no.
12 I think it calls for a yes or no answer.

13 A. At this point I'd have to answer no.

14 Q. If he had the pain in 1979, it was not there. Now
15 that's what you're saying, Doctor.

16 A. No, I'm saying --

17 Q. No, Doctor, listen to the question again. If he had
18 the pain in 1979, it was there, wasn't it, sir? If I have
19 this paper in my hand, it is there, isn't it, sir?

20 A. Only if you're holding it that way, yes, sir.

21 Q. Doctor, I can have it if I'm holding it behind my
22 back. If I have this paper in my hand, it is there, isn't
23 it, sir?

24 A. It is.

1 Q. If this man had the pain in 1979, it is there,
2 isn't it, sir, in '79?

3 A. If we make the assumption that you have asked me to
4 make, it's there, yes, sir.

5 Q. Yes. And, Doctor, if he had the pain in -- if it
6 was there in 1979, it did not clear up, did it, sir?

7 A. It could have, yes, sir.

8 Q. Excuse me, Doctor. If it was there, it was there,
9 wasn't it, sir?

10 A. It was my judgment --

11 Q. Doctor --

12 MR. CARR: Would you direct the witness to answer my
13 question.

14 THE COURT: Doctor, respond to the question. You're
15 not responding.

16 Q. Would you answer my question, Dr. Suskind, as the
17 Court has directed you to do?

18 A. Under the circumstances it was there, sir.

19 Q. Yes. And if it was there, sir, it did not always
20 clear with time, did it, sir?

21 A. It was my judgment that it did, sir.

22 Q. Doctor --

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

1 A. I'm answering the question, sir.

2 MR. HEINEMAN: Objection, Your Honor, he did answer
3 the question.

4 A. I'm answering the question.

5 Q. Assuming it was there, Dr. Suskind.

6 THE COURT: Objection is overruled.

7 Q. Assuming it was there, Dr. Suskind, it did not
8 clear with time, did it, sir?

9 A. It was my judgment that it cleared with time.

10 MR. CARR: Your Honor, would you direct the witness

11 --

12 Q. But I'm asking you, sir, and the Court is I hope
13 going to direct you to assume that it was there. If you
14 assume that the pain was there, Doctor, it did not clear with
15 time, did it, sir?

16 THE COURT: Doctor, you have to answer the question
17 in the context of the assumptions which I have ordered you to
18 make and respond directly to the question. Please do so.

19 A. Under those circumstances it didn't clear with
20 time.

21 Q. Thank you, Doctor.

22 A. But that isn't what I said in my statements.

23 MR. CARR: Your Honor, would you direct the jury to
24 disregard what the witness has said. It's not responsive to

1 my question.

2 THE COURT: The jury is so ordered. That last
3 comment was not responsive to the question. The jury is
4 ordered to disregard it. I am asking you not to make
5 responses that are not responsive to the question?

6 A. Your Honor, I'm doing the best I can, sir, to tell
7 the truth honestly.

8 THE COURT: Doctor, I have innumerable times in the
9 course of your testimony suggested to you the proper way in
10 which to respond to questions in this Court, and you have so
11 far refused to follow my requests. That last response was
12 not responsive to the question. It was not called for by
13 anything in the question, and you made it anyway. I'm
14 ordering the jury to disregard it. I'm asking you again to
15 follow the requests of this Court.

16 A. Yes, sir.

17 THE COURT: As to how testimony is to be done in the
18 Court in Illinois. We'll take a short break at this time.

19 (At this time the following proceedings were had in
20 chambers out of the hearing of the jury.)

21 THE COURT: Well, on the quick basis, why are we
22 here?

23 MR. HEINEMAN: Judge, when we were before you a week
24 ago today on the 28th, we talked to you about a motion we had

1 filed, and I think it was filed on the 25th of February with
2 respect to conducting a voir dire of the jury on the -- on
3 some matters that had appeared in newspaper articles and I
4 think a magazine article. Mr. Carr at that time said he was
5 going to file a brief. I don't believe he has or at least if
6 he has--

7 MR. CARR: I haven't had a chance to get to it, no,
8 sir.

9 MR. HEINEMAN: The other one was a motion for a
10 mistrial in connection with the length of the case.
11 Particularly, your Honor, in connection with the polling of
12 the jury situation, the delay is causing the matter to get
13 stale, and we would like, we would appreciate it if the Court
14 would rule on this so that we can -- if the Court rules in
15 our favor, we can get this thing done before there's nothing
16 left to make a record of, and, therefore, we urge the Court
17 to rule on it.

18 MR. CARR: Your Honor, I haven't had an opportunity
19 to respond to their motions, because Monsanto has obviously
20 embarked upon a campaign to harass plaintiffs' counsel and to
21 wear out the Court as well as the jury. We have had since
22 the middle of January half a dozen motions for supervisory--
23 more than that, half a dozen is too few -- more than that
24 have been filed in the Supreme Court requiring practically

1 immediate replies. As the Court knows, we're in court daily
2 and days that we're not in court we have to prepare for the
3 examination of the witnesses that are here, and as the Court
4 can see, the preparation for cross-examination of this
5 witness has been absolutely essential, because he challenges
6 every -- the basis for every question that I ask and
7 challenges me to support the question with a citation of some
8 sort, where does it say that, and if I had not prepared for
9 this particular witness the way I had, it would be impossible
10 to cross-examine and to show him to be the evader, the man
11 that's not telling the truth and doesn't obey the orders of
12 Court, obviously flaunting the Court right in front of the
13 Court, that I would be in real trouble in cross-examining
14 this witness had I not used -- not had the time to prepare
15 for this. I prepare for this witness at night, in the
16 morning, at lunch hours and on the weekends I write responses
17 to the motions for supervisory order that the defendant has
18 filed in the Supreme Court. They have just this week -- I'm
19 sorry, yeah, just this week filed another. They may not even
20 have served them on you--

21 THE COURT: I got a copy.

22 MR. CARR: Two motions, one's an emergency motion
23 and another is a supplemental motion to a previous motion for
24 supervisory order.

1 THE COURT: I think I got one of them. I may have
2 gotten both.

3 MR. CARR: One has never been presented to the
4 court. It's on matters that never even been presented to
5 this Court for determination, presented it directly to the
6 Supreme Court and to make it short I'm devoting the time that
7 I have available to me to responding to the matters in the
8 Supreme Court and to preparing for the witness in this
9 Court. The motions that counsel have referring to are -- the
10 only reason they're pushing this Court for an early action,
11 they've already said to the Court would the Court rule, and
12 he knows they're going to deny them based on what he said in
13 the record earlier that he would expect a denial. The only
14 reason he wants it is to file another motion for supervisory
15 order in the Supreme Court.

16 Now, I don't have time, and there has to be a
17 response made to those motions, because they --

18 THE COURT: You're talking about the Supreme Court
19 motions?

20 MR. CARR: No, the motions that they made here,
21 because they are going to file another motion in the Supreme
22 Court, and if I haven't got my record here adequate to
23 respond to that motion, it would appear to the Supreme Court
24 that their motion was valid, so I have to prepare for it, and

1 I simply have not had time to prepare for this witness and
2 answer the motions that are in the Supreme Court already and
3 file a response to this, to these last two motions as well,
4 and so I simply haven't had time. I see no emergency reason
5 for it. There isn't anything in their motion that would
6 suggest an emergency reason for ruling, and I do want time to
7 respond to it, but I've got to work this weekend on these two
8 motions as Mr. Siegfried has worked during the week on it.
9 I've got to work this weekend on those two motions, and I
10 hopefully during the days that we have off next week I will
11 be able to respond toward the end of next week to these two
12 motions that they have most recently filed.

13 THE COURT: We've got three days off next week.

14 MR. CARR: Yes. Now, there may come over the
15 weekend another motion in the Supreme Court. That's been the
16 pattern thus far. Practically every week we get another
17 motion in the Supreme Court.

18 MR. HEINEMAN: Well, Your Honor, I think if Mr.
19 Carr had used part of the time he just used for those
20 remarks, he might have gotten his answer in. The fact
21 remains that there was an entire week off beginning February
22 25th when there wasn't any court at all because of the
23 Court's illness and because of the unavailability of one of
24 the jurors on Friday, the 28th, and I -- obviously there's

1 never been stated in the record by me a statement that the
2 Judge is going to deny our motion. I certainly have every
3 hope and belief that the Court will grant our motion.

4 The third thing is that I disagree with Mr. Carr
5 that this witness is flaunting the orders of the Court, and I
6 suppose the Court may disagree with me on that, but --

7 THE COURT: Most definitely disagree with you on
8 that.

9 MR. HEINEMAN: The Court has said so to me at the
10 bench, and I disagree with both of you.

11 THE COURT: It's your right to do so.

12 MR. HEINEMAN: So anyway we've made our position
13 plain, I think. The position of this Court in the past has
14 been to require very rapid responses to I think most of the
15 motions that have been filed on both sides, and we're just
16 asking the Court to have similar dispatch here.

17 THE COURT: I have -- when I got back from being
18 sick I read those motions. I don't think there's anything
19 about them that's in danger of getting stale. I think the
20 explanation as to why a response has not been filed is
21 adequate as far as I'm concerned. I have -- it's obvious
22 that the Supreme Court, anything in the Supreme Court takes
23 priority over anything in this Court, and I have consistently
24 taken the position that the importance of proceeding in front

1 of the jury takes precedence over what we may have to do back
2 here and have normally arranged the time of what we do back
3 here accordingly. So under the circumstances I would ask Mr.
4 Carr to get them in as soon as he can, but I'm not going to
5 put a time limit on it because of the circumstances. I have
6 been served, I think I've been served with everything. I've
7 been served with most of what's been filed in the Supreme
8 Court, and it is very time consuming and has been very
9 extended, and under the circumstances I don't think there's
10 any question that that activity takes priority and when in my
11 opinion the issue has been, the record has been -- is in such
12 a state that I can rule here, I will rule. I'm not going to
13 rule before a response has been filed or a reasonable
14 opportunity for a response under the circumstances of
15 preparation for this case and Supreme Court activities has
16 taken place, because the record, once I exercise my
17 discretion the record has to reflect those matters upon which
18 I exercise my discretion. At this point in time the record
19 cannot possibly so reflect, so your request for a ruling at
20 this time is denied. I will wait for the appropriate
21 responses to the motions, and they'll be taken up in due
22 course when those responses are in. I think that's it.

23 (The following proceedings were had in open Court.)

24 THE COURT: Ladies and gentlemen, I don't know if I.

1 told you earlier, I may not have. Monday morning we'll start
2 at ten o'clock instead of 9:30. We'll start Court at quarter
3 to ten o'clock. Mr. Carr, you may proceed.

4 Q. Dr. Suskind, I put before you the records, the 1979
5 records that you made referable to these ten persons you
6 examined in 1979. The first one, Exhibit 1733, is with
7 Charles Farley. First of all, did Charles Farley have
8 symptoms referable to pains, fatigue, and these neurological
9 symptoms in 1953? If you have the 1734 exhibit in front of
10 you, it would assist you in that.

11 A. According to this checklist he did, sir, yes.

12 Q. And would you look at the Exhibit 1733 and did Mr.
13 Farley have symptoms in 1979? If you could look at Page 17
14 and 18, it would help you.

15 MR. HEINEMAN: Your Honor, let me object. Haven't
16 we been through all this before? This has been asked and
17 answered on 17 --

18 THE COURT: 1733 is the number.

19 MR. HEINEMAN: I'm sorry?

20 THE COURT: 1733 is the number.

21 MR. HEINEMAN: Right. 1733, we been through all
22 this.

23 MR. CARR: We have been through this, your Honor,
24 but I'm now going through it for the purpose of showing that.

1 these symptoms have not cleared with time as the witness
2 insists they have.

3 THE COURT: Go ahead.

4 Q. 1733, sir, are you there?

5 A. I thought we did go over that.

6 Q. On Page 17-- Oh, indeed we did. Are you at Page
7 17, sir? Did Mr. Farley have symptoms in 1979, sir,
8 according to your interpretation of his records?

9 A. He had complaints in 1979, sir.

10 MR. CARR: Your Honor, direct the witness to answer
11 my question.

12 THE COURT: Doctor, that was not responsive. Please
13 answer the question that was asked of you.

14 A. Yes, by your definition, sir.

15 Q. According to your definition, according to your
16 interpretation of these records, did Mr. Farley have symptoms
17 in 1979?

18 A. He had subjective symptoms, sir.

19 Q. Did his symptoms clear up with time, sir?

20 A. We believe that they did.

21 Q. Doctor, did he have the symptoms in 1979?

22 A. He indicated that he had --

23 Q. Excuse me, Doctor. Did he have the symptoms in
24 1979?

1 A. Yes, he complained in '79, and those were symptoms
2 as you have defined them.

3 Q. Doctor, my question is not what he claimed. Did he
4 in your interpretation of his records have symptoms in 1979?

5 A. It was our judgment that he did not, sir.

6 Q. Doctor, haven't you just interpreted these records
7 as saying that he did have symptoms in 1979? Didn't you
8 just--

9 A. This is a record, not an interpretation.

10 Q. Excuse me, Doctor. Would you just tell---

11 MR. CARR: Could you read his answer back when I
12 asked whether or not he had symptoms in 1979.

13 (Court reporter read back the answer.)

14 Q. Doctor, by your definition of these records, your
15 interpretation of these records, did Mr. Farley have symptoms
16 in 1979?

17 A. I believe my answer was no, sir.

18 Q. Did he report to you, did you believe he was
19 telling the truth in 1979?

20 A. Yes.

21 Q. Do you believe he was telling the truth when he
22 said he had muscle pain in 1979 dating from '49?

23 A. Yes.

24 Q. So he had the pains then, did he, sir?

1 A. No, not necessarily.

2 Q. Doctor, was he telling you the truth that he has
3 the pain or not?

4 A. Yes.

5 Q. Then he had the pain, didn't he?

6 A. No, not necessarily.

7 Q. Doctor, do you believe he was telling the truth
8 when he told you he had the pain in '79?

9 MR. HEINEMAN: Asked and answered, Judge.

10 THE COURT: Overruled.

11 Q. Did you believe he was telling you the truth, the
12 facts, sir?

13 A. I said that earlier, sir.

14 Q. That he had muscle pain in 1979?

15 A. I believe that he was telling the truth, sir.

16 Q. And so that the fact was that he had muscle pain in
17 1979, isn't that correct, sir?

18 A. Whether they were real or believed, sir, that's the
19 difference, they were real --

20 Q. Doctor, was there anything -- did you believe he
21 was telling you the truth?

22 A. His belief, not mine, sir.

23 Q. Doctor --

24 A. His belief.

1 Q. Is there anything in this record where you can
2 fathom that he's pretending or making up or in fact doesn't
3 have the pain? Where in this record is there such
4 suggestion, sir?

5 A. In our judgment, sir --

6 Q. Excuse me, Doctor. My question is where in the
7 record, what in the record do you use to come to a conclusion
8 that he was lying to you when he told you he had the pain?

9 A. I didn't say he was lying, sir. He was telling the
10 truth.

11 Q. Then if he was telling the truth, he believed that
12 he had pain, correct, sir?

13 A. He believed that he had pain.

14 Q. He either had the pain or he imagined it, right,
15 sir?

16 A. He believed that he did.

17 Q. If he believed he had it and he didn't have it, it
18 was an imagination?

19 A. No, not necessarily.

20 Q. Doctor, it either has to be real or imagined. Now
21 was Mr. Farley's pain real in your judgment, sir?

22 A. We believed -- I don't believe so.

23 Q. You believe it was imagined then?

24 A. No, I believe that he believed that he had the

1 pain.

2 Q. Was it real, did he have the pain or not, Dr.

3 Suskind. Was it real or was it imagined pain?

4 A. He thought he did.

5 Q. Excuse me, Doctor. Was it real pain or was it
6 imagined pain?

7 A. It was neither, sir.

8 Q. Sir?

9 A. It was neither.

10 Q. What was it, sir?

11 A. He believed that he had the pain.

12 Q. Excuse me, Doctor--

13 A. And he was telling the truth.

14 Q. Doctor, did he have the pain in your judgment?

15 A. In our judgment, no, sir, he did not.

16 Q. Then it was imagined pain that he was having?

17 A. No, it wasn't.

18 Q. Doctor, it's either real or it's not real, which
19 was it, was it real or not real?

20 A. He believed that he --

21 Q. Excuse me, Doctor. My question is specific and
22 precise. Was it real or was it not real?

23 A. In this instance we believed it was not real.

24 Q. Now, Doctor, what in the record suggests to you

1 that his pain was not real?

2 A. In going over all of the entire record, this --

3 Q. Doctor, I'd like for you to tell me and show me
4 what in that record allows you to come to a conclusion that
5 Mr. Farley was imagining these various complaints that he
6 had, sir?

7 A. Well, one of them, sir.

8 Q. Okay. Point it out to me, sir. Where is it?

9 A. One of them was that he was a full time employee of
10 the state.

11 Q. Yes.

12 A. Okay. And doing -- and had no disability, sir.

13 Q. Yes.

14 A. He had no disability.

15 Q. Right.

16 A. Okay. That was one of the reasons that we felt
17 that -- that this was not a disabling complaint --

18 Q. Doctor, I didn't ask you --

19 A. And not a real complaint.

20 Q. Doctor, I didn't ask you about disabling
21 complaints. These men had disabling complaints only for a
22 couple of years. In '53 how many of these men had real
23 complaints of pain in '53?

24 A. Some of them couldn't work. Now he had a full time

1 job in '79.

2 Q. My question is, sir, how many of these people in
3 '53 had disabling pain? I think we went through it, and you
4 said three or four, didn't you, sir?

5 A. Right, I did.

6 Q. Doctor, the others, they had the pain, did they
7 not, sir, but they went to work with their pain, didn't they,
8 sir?

9 A. They might have.

10 Q. Well, they did. You've sought the records, you saw
11 that these men went to work in '49, there was just half a
12 dozen among them that were off for a couple years.

13 A. Right.

14 Q. Some of them were off for a couple months.

15 A. Right.

16 Q. Some of them were off a couple weeks.

17 A. Right.

18 Q. They had different employment attendance records,
19 didn't they, sir? These men all worked during this period of
20 time, the ones you saw in '53?

21 A. Most of them did.

22 Q. And, Doctor, they had the complaints, they were
23 real in '53 and working, weren't they, sir?

24 A. They were working and not disabled, sir.

1 Q. The complaints were real in '53, weren't they, sir?

2 A. Some of them.

3 Q. Are you now saying that they were unreal? Didn't
4 you just say that these were real, these were symptoms that
5 they had in '53?

6 A. They believed that they did, sir.

7 Q. Oh, Doctor, we didn't get that, you didn't say that
8 at all, sir.

9 A. What do you mean? We didn't say that.

10 Q. Doctor, are you suggesting that the only pain that
11 is real is the pain that disables you?

12 A. No, I'm not suggesting that.

13 Q. Because you know that's not a fact, sir. So the
14 fact that he went to work has no side at all that he does or
15 does not have pain, isn't that correct, sir?

16 A. It's a good indication that he doesn't have pain,
17 sir, he doesn't have real pain.

18 Q. The fact that he's going to work means that--
19 indication that he doesn't have real pain? Is that what
20 you're saying, Doctor?

21 A. Yes, I am.

22 Q. Then what you're saying then the only pain that is
23 real is the pain that prevents you from working, is that what
24 you're saying, Doctor?

1 A. That's not what I'm saying, sir.

2 Q. What are you saying, sir?

3 A. It's not an all or none problem, sir.

4 Q. Doctor, because a person can work and does work
5 with pain, a lot of people work every day with pain, don't
6 they, sir?

7 A. Some can.

8 Q. And these men here that were working in 1953 all
9 except a half a dozen, 23 men were working with one or more
10 of these complaints, weren't they, sir?

11 A. Complaints which were not real, sir.

12 Q. They were not real symptoms?

13 A. They complained, and we felt in our judgment, sir,
14 in our judgment, that they believed they had pain, but the
15 pain was certainly not of a nature or a level or a type which
16 prevented them from working, and the same is true of Mr.
17 Farley. He had a full time job, sir, with the county, and as
18 I know it, he was doing extremely well. The fact that he put
19 that he had some pain is a cause for me as the person making
20 a judgment whether it was real or he believed that he did,
21 but if he had the pain, it was of no consequence, sir.

22 Q. Doctor, his pain had -- that he had was imaginary
23 and unreal is what you're saying, correct, sir?

24 A. No, sir, I'm saying that he believed that he had

1 the pain.

2 Q. Excuse me, Doctor. Didn't you just tell us that you
3 believed his pain was unreal?

4 A. It was either there or not there, but he thought he
5 had pain.

6 Q. Doctor, didn't you just tell us that you believed
7 his pain was imaginary and not real?

8 A. In the case of Mr. Farley he was complaining --

9 Q. Doctor, would you answer my question please, sir?

10 A. There was no objective --

11 MR. CARR: Your Honor, would you direct the witness
12 to answer my question.

13 THE COURT: Doctor.

14 A. Yes, sir.

15 THE COURT: You haven't responded to the question.

16 THE WITNESS: Would you repeat the question, sir.

17 (Court reporter read back the question.)

18 A. If believing he has pain which he doesn't have --

19 MR. CARR: Your Honor, would you direct the witness
20 to answer my question.

21 THE COURT: Doctor, you're not answering the
22 question.

23 A. According to your two categories it's imaginary.

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

1 to answer my question.

2 A. It's imaginary.

3 Q. It was not real and imaginary, is that right, sir?

4 A. According to your --

5 Q. What in the record, sir, prompts that conclusion
6 that Mr. Farley had imaginary pain?

7 A. The fact that he was able to perform as well as he
8 was and looked wonderful. He was in good physical condition,
9 sir.

10 Q. Yes, Doctor. Can you have pain in your back this
11 very moment and be in good, looking good physical condition?

12 A. Not if the pain is significant, sir.

13 Q. Doctor, I'm not talking about -- when you say
14 significant pain, what do you mean, pain that disables you?
15 Is that what you mean by significant pain?

16 A. Pain that causes -- may I explain? It's pain --

17 Q. Doctor, is what you mean by significant pain, pain
18 that disables you?

19 A. I'm attempting to answer, sir.

20 MR. HEINEMAN: Objection, Your Honor.

21 MR. CARR: Would you direct the witness to answer
22 my question?

23 MR. HEINEMAN: May I make an objection? Do you
24 mind? My objection, Your Honor, is that he asked three fast.

1 questions in a row. When the witness tries to start to
2 answer one, he interrupts him with another one. I object to
3 it. I'd like to let the witness answer a question.

4 THE COURT: I think those were refinements of the
5 same question. The last one is the one obviously he should
6 answer. Doctor, answer the question please.

7 A. Can I hear the last question please?

8 (Court reporter read back the question.)

9 A. What I mean by significant pain is pain of such a
10 nature, of such a character that there is evidence of it in
11 what the person is capable of doing, carrying out normal
12 activities and normal function. That's what I'm talking
13 about.

14 Q. That's significant pain?

15 A. That's significant pain.

16 Q. Which prevents him from doing those things?

17 A. Prevents him in some way from doing that, yes, sir.

18 Q. Doctor, isn't there a lot of pain that we have that
19 doesn't prevent us from doing those things?

20 A. Not necessarily, sir, no.

21 Q. Doctor, you can have a headache and work every day
22 with a headache, can you not, sir?

23 A. Not well.

24 Q. You can function and get your job done, can you

1 not, sir? People do it all the time, don't they, sir?

2 A. Not with persistent headaches, sir.

3 Q. Ladies at particular times of the month have pains
4 all the time, and they go to work, don't they, sir?

5 A. They usually take time off if they have pain
6 enough.

7 Q. Sometimes they do if they're severe, but they can
8 have the pains and work every day, don't they, sir?

9 A. They might.

10 Q. They've got children to support, they got families
11 to support, they go to work all those days of the month
12 unless they're one of the unfortunate few that are afflicted
13 with severe cramps and pains at that time of the month, isn't
14 that right, Doctor?

15 A. Yes.

16 Q. Woman do it all the time, don't they, sir?

17 A. Yes, and they don't function well though if they
18 have pain.

19 Q. Doctor, they go to work though, don't they, sir?

20 A. But that doesn't mean that they function well.

21 Q. Doctor, let's just take Mr. Farley, for instance.
22 Now, did he have real and unimagined pain in 1949 right after
23 this occurrence?

24 A. I didn't see him in 1949, sir.

1 Q. Did he have-- When did you see him, sir?

2 A. 1953.

3 Q. Did he have real and unimagined pain in 1953, sir?

4 A. We weren't sure about that, sir.

5 Q. What made you unsure about it, sir? Mr. Farley
6 worked every day. Did you put in a note that Mr. Farley has
7 got unreal and imaginary pain in 1953? Mr. Farley lost--

8 A. In 1953 I believe we felt that he had some pain in
9 the calves and the thighs, and he was one of those people
10 that I indicated I thought had a significant complaint of
11 pain in 1953.

12 Q. And he worked every day, he lost no time from work,
13 did he, sir?

14 A. I don't know.

15 Q. Look at your records, sir. Have you looked at your
16 records, sir?

17 A. Yes, sir.

18 Q. Do you see that it says he lost no time from work?

19 A. Yes.

20 Q. But he had significant pain in 1953, didn't he,
21 sir? Isn't that what you just told us?

22 A. Yes.

23 Q. We have a comment on it, sir.

24 Q. Isn't that just what you told us, sir?

1 A. We have a --

2 Q. Excuse me. Didn't you just tell us that he had
3 significant pain in 1953?

4 A. He was one of those that we thought might have
5 significant pain.

6 Q. Is that right, sir?

7 A. Yes, sir.

8 Q. But he worked all the time, didn't he, sir? Didn't
9 he sir?

10 A. According to this record he didn't lose any time,
11 yes, sir.

12 Q. Now, he's continued that way from 1949, 1953 up to
13 the present time. He still works all the time, correct,
14 sir? Isn't that right, sir?

15 A. Yes, sir.

16 Q. Now he had significant pain in 1953 but worked, did
17 he not, sir?

18 A. Yes, he did.

19 Q. So it wasn't imagined pain in 1953, was it, sir, it
20 was significant real pain, wasn't it, sir?

21 A. At that time according to this record we felt it
22 was, sir.

23 Q. But he worked, didn't he, sir?

24 A. Yes.

1 Q. It wasn't imaginary, was it, sir?

2 A. At that time we believed that it wasn't imaginary.

3 Q. Was not imaginary?

4 A. Was not imaginary.

5 Q. 1979 he tells you he's got pain, does he not, sir?

6 A. Yes.

7 Q. He dates it from 1949, doesn't he, sir?

8 A. He so states, sir.

9 Q. He's working all the time, isn't he, sir?

10 A. Yes, sir.

11 Q. Now, sir, you call his pain in 1979 imaginary
12 because he's working all the time with that pain, but he had
13 significant pain in 1953 and worked all the time, and you
14 said it was significant pain. Now, would you tell me the
15 difference between those two circumstances, sir?

16 A. In our --

17 Q. In one instance you can call it imaginary and not
18 real and in the other instance you say it's significant and
19 real.

20 A. Looking at the records, sir, in 1953 the histories
21 that were taken of Mr. Farley included such comments that we
22 felt that the pain that he was complaining about was
23 significant, although we did have a comment that he was -- he
24 was anxious to impress us. That's in it.

1 Q. Surely.

2 A. He was anxious to impress us with his pain.

3 Q. No quarrel with that, but nevertheless he had
4 significant pain and you so stated and you so believed and he
5 went to work every day in 1953?

6 A. Yes, he did.

7 Q. Isn't that correct, sir?

8 A. Yes.

9 Q. Now, tell me what in the record has changed now
10 that in 1979 that these same complaints of pain that he said
11 he had had since '49 you now say is imaginary and unreal?

12 A. Because --

13 Q. What in his 1979 record? Point it out to me please,
14 sir.

15 A. There is no, no room for comment on Page 17, so it
16 couldn't have it.

17 Q. So it can't be the record, can it, sir?

18 A. In our overall judgment--

19 Q. It can't be the record, can it, sir? It can't be
20 something in the record upon which you base a judgment that
21 he had imaginary pain, isn't that right, sir?

22 A. No, it's on the basis of our judgment, sir.

23 Q. Doctor, what in the record did you exercise you're
24 judgment upon to come to that judgment, sir?

1 A. The fact that he had a full time job and was doing
2 very well and looked very well.

3 Q. Dr. Suskind, he had that full time job in 1953 and
4 worked every day. You got the same situation, sir. Where is
5 the difference between the two, sir?

6 A. There is a comment by the physician about having
7 episodes of depression, I believe.

8 Q. Yes, that's one of his CNS problems, isn't it, sir?

9 A. No, sir, no, sir, it's not.

10 Q. Oh, isn't that something that you asked questions
11 about, sir?

12 A. Yes, we did, but it doesn't have to be central --.

13 Q. Excuse me, Dr. Suskind. Isn't that something you
14 have listed on other occasions as a consequence of TCDD
15 exposure?

16 A. Not depression, sir.

17 Q. Oh, you haven't said that, sir? Not in these
18 charts and I'll withdraw that statement, Doctor, until I get
19 the other records on this man. But in the -- in the essence
20 you say he was depressed in 1979?

21 A. He complained of depression, sir.

22 Q. Yes. Did that make you think then that he had
23 imaginary pain because he was depressed?

24 A. Yes.

1 Q. Is that what it is, sir?

2 A. Yes.

3 Q. Anything else, sir, that made you think that he had
4 imaginary pain?

5 A. The fact that he looked well and had a full time
6 job and was doing extremely well with his job and everything
7 else.

8 Q. Doctor, wouldn't that actually lead you to the
9 contrary conclusion? A man that looks well and acts well is
10 not going to imagine pain?

11 A. Not necessarily.

12 Q. Doctor, I didn't say not necessarily, but isn't it
13 --

14 A. He complained about the pain.

15 Q. Excuse me, Doctor, isn't it ordinary, sir, that if
16 a person acts well and looks well, that he's not going to
17 imagine pain?

18 A. Not -- no, no.

19 Q. Oh, no?

20 A. No.

21 Q. All right. Is there anything other than
22 depression, sir, that makes you think he imagined the pain?

23 A. The same reason we gave in 1953 about his
24 attempting to impress us with his problems.

1 Q. Doctor, in 1953 you didn't say it was imagined.

2 A. That's right, we --

3 Q. You said it was real.

4 A. We thought at that time it was, giving the patient
5 the benefit of the doubt, sir.

6 Q. Well, did you give him the benefit of the doubt
7 in '79 as you did in '53?

8 A. No, sir, in this case we did not.

9 Q. Why not, Doctor?

10 A. Because all of the evidence showed that it wasn't
11 very likely that his pain was significant, sir.

12 Q. Doctor, I'm not talking about significant now.
13 We're talking about whether it was real or imagined. You
14 keep--

15 A. I am, too.

16 Q. I'm not asking you the question about significant
17 pain, am I, sir?

18 A. Right.

19 Q. Significant pain is pain that you say disables one
20 from functioning in his everyday activities. Now, this man
21 didn't have that in '79, and he didn't have it in '49, he
22 didn't have it in '53, did he, sir?

23 A. I didn't see him in '49 and '50, sir. I only saw
24 him in '53.

1 Q. So far as you know he didn't have it, did he, sir?

2 A. I said I didn't see him.

3 Q. My question, sir, is so far as you know he didn't
4 have it, did he, sir?

5 A. I can't tell you, sir.

6 Q. Doctor, was he nervous in 1979?

7 A. He didn't check nervousness, no.

8 Q. Did he have fatigue in '79, sir?

9 A. He said he did, sir.

10 Q. Did he have fatigue in '53? Doctor, on Page 21 to
11 help you move along he had continuous fatigue in 1953, didn't
12 he, sir?

13 A. That's what he complained of, sir.

14 Q. But he worked every day, didn't he, sir? He worked
15 every day, didn't he, sir?

16 A. Yes, he did, sir.

17 Q. He had fatigue in 1979, didn't he, sir?

18 A. That's what he complained of.

19 Q. Was that a real or imagined fatigue, sir?

20 A. I believe it was imagined, since he was working
21 full time and doing very well, sir.

22 Q. Doctor, he was working full time in '53, and it
23 wasn't imagined then. Now, in '79 it's imagined. Here is an
24 a grown man -- how old is he, sir, in '79?

1 A. How old was who? ?

2 Q. He was 27 in 1953, and that's 26 years later, sir.
3 He's now 53 years of age, this 53 year old man is imagining
4 that he's fatigued and imagining that he has pains, is that
5 what you're telling us, sir?

6 A. I am, sir.

7 Q. What else did he imagine in 1979?

8 A. His complaint of dizziness.

9 Q. That was imagined as well?

10 A. There was no evidence of --

11 Q. Excuse me, Doctor. Was that imagined or not?

12 A. Well, he might have believed it.

13 Q. Excuse me, Doctor, was it real or was it imagined?

14 A. It was imagined, sir.

15 Q. What else did he have that was imagined in '79?

16 A. The pain which we been over, sir.

17 Q. So he had imagined pain in '79, he had imagined
18 dizziness in '79, he had imagined fatigue in '79, is that
19 correct, sir?

20 A. Correct, sir.

21 Q. All of the problems that he had in '79, were they
22 all imagined, sir?

23 A. He might have believed he had them.

24 Q. Excuse me, Doctor, my question--

1 A. But they weren't real.
2 Q. Were all the problems that he had in '79 imagined?

3 A. By your definition, yes, sir.

4 Q. Not by my definition, Doctor, by your definition.

5 I want to make it crystal clear by your definition were all
6 the complaints that he had in 1979 imagined, sir?

7 A. He believed that he had them, sir, yes.

8 MR. CARR: Your Honor, would you direct the witness
9 to answer my question.

10 THE COURT: Doctor, your answer was not responsive
11 to the question. Answer it please.

12 A. Yes, they were, sir, in our judgment.

13 Q. Doctor, was Mr. Farley one of those persons that
14 was diagnosed by Dr. Nessman as being a psychoneurotic, sir,
15 in 1955?

16 A. I don't know, sir.

17 Q. Doctor, does a psychoneurotic imagine problems?

18 A. He might.

19 Q. Doctor, did Dr. Nessman suggest to you that the
20 psychoneuroses that this man had came subsequent to his
21 dioxin exposure?

22 A. I haven't seen Dr. Nessman's report in a long time,
23 sir, and I don't know whether or not he even examined Mr.
24 Farley.

1 Q. Doctor did Mr. Farley in 1979 or 1953 strike you as
2 a neurotic person or did you tell us in '79 that he looked
3 like he could function well and went to the job every day and
4 did all these things every day? Which was he, sir?

5 A. Except for his complaints about depression, sir.

6 Q. Oh, but, no, he had more complaints than that. He
7 had complaints about fatigue, he had complaints about pain,
8 he had complaints about dizziness, all of which were
9 imagined, Dr. Suskind.

10 A. Yes, sir.

11 Q. Now, that's the mark of a neurotic person then,
12 isn't it, sir?

13 A. It could be.

14 Q. Well, Doctor, is it in your professional judgment?

15 A. It doesn't have to be.

16 Q. It either is the mark of neurotic person, Doctor,
17 or he's lying to you. Now, it has to be one of those, sir.
18 If it's an imaginary pain, he is a neurotic person and
19 imagining that he has these pains or he's lying to you. Now,
20 which is it, sir?

21 A. Neither.

22 Q. Well, what is he then if he's not a neurotic or a
23 liar?

24 A. We didn't do a--

1 Q. Excuse me, Doctor, my question is --

2 A. We didn't do a psychiatric examination in '79, sir.

3 Q. Doctor, my question to you is in your opinion, sir,
4 which is he, a neurotic, a psychoneurotic or a liar.

5 MR. HEINEMAN: Objection, asked and answered.

6 THE COURT: Objection sustained.

7 Q. What is he if he is not, sir, what are the other
8 alternatives that we have, Doctor?

9 A. The other alternatives is that he may be depressed.

10 Q. Well, that means -- and imagining these
11 complaints. That means he's neurotic by definition, isn't
12 it, sir?

13 A. Not necessarily.

14 Q. Oh, no? What is he if he's imagining complaints
15 that are unreal?

16 A. But having not done an examination --

17 Q. Excuse me. Doctor, what is he? You're making a
18 judgment, sir, based upon a single complaint of depression
19 that his problems were imaginary and not real, aren't you,
20 sir? Isn't that --

21 A. No, sir.

22 Q. -- What you made your judgment upon, sir?

23 A. No, no.

24 Q. Tell me what you made your judgment on that these

1 are imagined complaints?

2 A. The other was that he was, he looked well, he had
3 no other things wrong with him, and he carried on a full time
4 job and was a very successful person at the time we examined
5 him.

6 Q. Doctor, you're describing somebody who's not
7 imagining things, aren't you, sir? You're describing not a
8 neurotic, you're describing now a liar, that he's lying to
9 you when he says he has dizziness or continuous fatigue or
10 pains, joint pains and muscle pains. You're not describing
11 now a neurotic person, are you, sir?

12 A. We were not in a position to determine whether or
13 not --

14 Q. Excuse me, Doctor. Would you answer my question
15 please, sir?

16 A. What is the question, sir?

17 MR. CARR: Would you read it to him.

18 (Court reporter read back the question.)

19 A. He was not a liar, sir.

20 Q. And he was not neurotic?

21 A. Having not done a examination, I can't tell you,
22 sir.

23 Q. Doctor, I want you to give us your judgment as a
24 long time expert in this area that you've seen hundreds of

1 people, if not thousands of people, I want you to give us
2 your expert judgment, sir, to account for these imaginary
3 complaints that you say he had. He either made them up
4 deliberately on purpose or he imagined them. Now what other
5 alternatives do we have, sir?

6 A. He believed that he had them, and if that's
7 imagined, then he imagined them.

8 Q. All right. Then he imagined that -- like a
9 hypochondriac, sir, believes that he has problems, right,
10 sir?

11 A. Correct.

12 Q. And so Mr. Farley was in your judgment a
13 hypochondriac?

14 A. He might have been.

15 Q. Is that your judgment, sir?

16 A. We didn't make that diagnosis, sir.

17 Q. Doctor, you're making that diagnosis now, because
18 I'm suggesting to you that either he was a neurotic person or
19 he was a liar, and you have already said he's not a liar, and
20 there isn't any in between. He's a hypochondriac, which is
21 neurotic person or he's a liar. What else is there, sir? If
22 he believes he has these ailments and he doesn't have them in
23 fact he is by definition neurotic, isn't he, sir?

24 A. No, sir.

1 Q. What is he if he's not neurotic?

2 A. He may believe he has them --

3 Q. Yes, that's what a neurotic--

4 A. -- But I couldn't make a diagnosis of neurosis
5 unless I did an examination for neurosis.

6 Q. Doctor, doesn't a neurotic believe that he has real
7 problems when in fact he doesn't have them? Isn't that what a
8 neurotic person is?

9 A. On some occasions that might be so, sir.

10 Q. All right. Doctor. Then this is a person on this
11 occasion that has these believed complaints, but they're not
12 real, is that correct, sir?

13 A. In the case of Mr. Farley --

14 Q. Is that correct?

15 A. -- I believe that's true.

16 Q. So he is, therefore, a person who's manifesting
17 neuroses, is he not, sir?

18 A. He could be, sir.

19 Q. All right. Doctor, can a person become neurotic
20 from exposure to TCDD?

21 A. I don't know, sir.

22 Q. Doctor, didn't Dr. Nessman tell you in 1955 that
23 the workers that he examined following their exposure to TCDD
24 were psychoneurotic?

1 A. Dr. Nessman by virtue of the tests that he did, the
2 Cornell Medical Index, and Dr. Nessman was not a
3 psychiatrist, sir, believed that there -- that most of the
4 employees he had examined had characteristics of
5 psychoneurosis.

6 Q. No, he said they had psychoneuroses, did he not,
7 sir, not characteristics. He described --

8 A. He did this one test, sir.

9 Q. Doctor, my question is he described them as
10 psychoneurotics, did he not, sir?

11 A. Well, from this -- from this memorandum, sir --

12 Q. Yes.

13 A. All that I read in it is that we discussed the
14 findings of Dr. R. H. Nessman concerning psychoneurosis in
15 most of the employees he has examined for us. I don't know
16 who these people were.

17 Q. Doctor, I didn't ask you that, did I, sir? Don't
18 you know, sir, that these were the men that were exposed to
19 dioxin that were making claims? Didn't we go through that,
20 sir, they're making claims to their disability resulting from
21 dioxin and your attorneys were worried about the implications
22 of that if that got into evidence?

23 A. I don't know whether or not he examined those
24 people who were applying for disability insurance or

1 disability awards, but if he did, then he must have testified
2 about them.

3 Q. Doctor --

4 A. I can't testify about them.

5 Q. Doctor, do you understand that you are answering my
6 question or not?

7 A. I am.

8 Q. You're not even remotely close to what I'm asking
9 you.

10 A. I am answering.

11 Q. Doctor, does it not describe there that the
12 attorney for Monsanto is worried about the implications if
13 his reports get into evidence? Isn't that what your
14 memorandum says there, sir?

15 A. I believe they got into evidence. I would assume
16 they did.

17 Q. Doctor, would you answer my question please, sir?

18 A. There's a statement about some apprehension.

19 Q. About what, sir?

20 A. About the implications that may be drawn if this is
21 submitted as evidence.

22 Q. Yes, as evidence of what, where do you have
23 evidence, sir? In a claim, don't you, sir, in litigated
24 matter, don't you, sir?

1 A. Yes, and I believe Dr. Nessman testified--

2 Q. Doctor, I didn't ask you that, did I?

3 A. We'll, that's -- that's pertinent.

4 Q. Why are you continuing to flaunt the Court? The
5 Court has told you to respond to my questions. Doctor, you
6 haven't the vaguest idea whether Dr. Nessman did or did not
7 testify, do you, sir?

8 A. There were other physicians who did though.

9 Q. Doctor, you don't have the vaguest idea whether Dr.
10 Nessman did or did not testify, do you, sir?

11 A. I really believe he did.

12 Q. Doctor, you don't have the vaguest idea whether he
13 did or didn't, do you, sir?

14 A. No, sir. No, sir. I do have an idea, and it's not
15 vague. It's a recollection, a recollection that other
16 physicians, and I believe that Dr. Nessman did.

17 Q. And, Doctor, upon what do you make that basis of
18 belief?

19 A. My best recollection, sir.

20 Q. Were you there when the physicians testified?

21 A. No, I wasn't there, but I know that there were
22 others who were going to testify.

23 Q. Yes, Doctor. But Dr. Nessman wasn't among them.
24 They're listed in the report that the commission made. You

1 A. I don't know, sir.

2 Q. Doctor, haven't you indicated on a number of
3 occasions that these are health effects from TCDD exposure?

4 A. We stated they were associated with TCDD exposure,
5 yes, sir.

6 Q. No, that isn't a yes to my question when you say
7 associated, because my question to you is haven't you stated
8 that these are health effects from TCDD?

9 A. Associated with that exposure, sir, yes.

10 Q. Doctor, when you say associated, that's meaning it
11 just not necessarily caused by, and you know that to be a
12 fact?

13 A. True.

14 Q. I'm saying haven't you said that these are health
15 effects from TCDD exposure? You can say, no, I haven't said
16 that, you can say, yes, I have said that.

17 A. I have said that they were symptoms that followed
18 the exposure to a runaway reaction which contained TCDD.

19 Q. Is that a yes or a no to my question, sir?

20 A. It is a yes in the sense that that's all we know
21 about it.

22 Q. Doctor, is that a yes to my question or not?

23 A. That's a yes.

24 Q. Yes. And matter of fact, Doctor, you have

1 published to the world that these are health effects from
2 exposure to TCDD, have you not, sir? Here, Doctor, you don't
3 need to get up.

4 A. Yes, I do, sir.

5 Q. Have a seat. This is a table that's a Defendant's
6 Exhibit, sir, it's a part of a chapter in a book that you
7 published, sir, is it not?

8 A. It is.

9 Q. And you have -- and referring to it as Defendant's
10 Exhibit 1692B, are we not, sir?

11 A. Yes, sir.

12 Q. And you have said to the world that these are human
13 health effects consequent on TCDD exposure, have you not,
14 sir?

15 A. Yes, we have.

16 Q. You said that as far as the neuromuscular symptoms
17 are concerned, pain in the skeletal muscles, chest,
18 extremities, peripheral neuritis and fatigue and so forth,
19 have you not, sir?

20 A. Yes, sir.

21 Q. Doctor, you found that these workers had these
22 clinical features or these health effects in '49 and '50 and
23 '53, did you not, sir?

24 A. No, sir.

1 Q. You did not, sir?

2 A. Nope.

3 Q. Did they have them in '49?

4 A. They had them in '49.

5 Q. Did they have them in '50?

6 A. They had them in -- yes, I believe they had them in
7 '50.

8 Q. Did they have them in 1953?

9 A. No, sir, not all of them.

10 Q. Not all of them, you're right. Did they have some
11 of these problems, sir?

12 A. Some of them complained.

13 Q. No, I know that, Doctor. My question is did they
14 have some of these problems in 1953?

15 A. Some of them complained about those problems.

16 MR. CARR: Your Honor, would you direct the witness
17 to answer my question.

18 THE COURT: Doctor, please answer the question. I
19 think what you said was not responsive.

20 A. Yes.

21 Q. Thank you, Doctor. And, Doctor, some of these men
22 continued to have or at least all of the men that had them in
23 '53 that were alive and re-examined in 1979 still had these
24 problems in 1979, didn't they, sir?

1 A. I can't tell you that. I haven't looked at them.

2 Q. Doctor, you have, we went through it. It is an
3 exhibit. Remember the exhibit that we went through that you
4 wrote? I asked you to write the various problems on. Do you
5 recall that, sir?

6 A. I'll have to refresh my memory, sir.

7 MR. CARR: Would you give him Exhibit 1734?

8 A. I have it right in front of me, sir.

9 Q. These men all of whom you examined, all the ones
10 that you examined in 1979 who had these problems in 1953
11 still had the same findings, symptoms rather in 1979, did
12 they not?

13 A. They had the same complaints, sir.

14 Q. Excuse me, Doctor.

15 A. We didn't call them symptoms. You did.

16 Q. Doctor, you called them symptoms in 1949, didn't
17 you, sir?

18 A. Yes, we did.

19 Q. When they told you they had an ache or a pain in
20 the muscle in 1949, you called that a symptom, didn't you,
21 sir?

22 A. Yes, we did.

23 Q. When they told you in 1950 that they had an ache or
24 a pain in their leg, you called that a symptom in 1950,

1 didn't you?

2 A. Yes, we did.

3 Q. Just this morning you said you called it a symptom
4 in 1953, did you not, sir?

5 A. They were complaints, which are synonymous --

6 Q. Doctor, my question is you called it just this
7 morning in front of this jury you said they had these
8 symptoms, and you called them symptoms in 1953, did you not,
9 sir?

10 A. Can I have a repeat of that? May I --

11 Q. When we were going through--

12 A. I'll have to refresh --

13 Q. When we were going through these symptoms just
14 before the break, sir, did you not agree that they had these
15 symptoms in 1953?

16 A. We didn't call them symptoms.

17 Q. Excuse me, Doctor, you called them symptoms this
18 morning, did you not, sir, in front of this jury right before
19 the break?

20 A. In the report we didn't, sir.

21 Q. Doctor, I'm asking you whether or not you called
22 them symptoms just a few moments ago before we had the break
23 in 1953?

24 A. Yes, if symptoms is synonymous with complaints.

1 MR. CARR: Your Honor, would you direct the witness
2 to answer my question and then not go beyond it. He's been
3 instructed to do that at least 20 times or 30 times during
4 the course of this trial, but he persists.

5 Q. Dr. Suskind--

6 THE COURT: Doctor --.

7 Q. Don't you understand what the Judge has told you?

8 THE COURT: Wait a second. Doctor, you are so
9 instructed. You have been admonished a number of times. You
10 answered the question and then went beyond it and stated
11 something that was not responsive to the question. Just
12 answer the question, Doctor, no more, no less. Mr. Carr, you
13 may proceed.

14 Q. Doctor, don't you understand what the Judge has
15 instructed you?

16 A. I do, sir.

17 Q. You do understand that you will have an opportunity
18 when Mr. Heineman asks you questions to say anything that you
19 want to say? You do understand that, don't you, sir?

20 A. Yes, sir.

21 Q. And you do understand that every time you add
22 something that way that isn't responsive to the question that
23 frequently at least, not every time I'm required to go
24 down a side path to disprove what you said and that takes up

1 a lot of time. You understand that, don't you? Don't you,
2 Doctor?

3 A. I don't have that kind of experience, but I--

4 Q. You understand that we've had to go down a lot of
5 side paths because of these non-responsive answers you've
6 given, haven't you, sir?

7 A. No, sir.

8 Q. You haven't understood that?

9 A. No, sir.

10 Q. You understand that it does divert the attention of
11 the jury from what I'm asking about though, you do understand
12 that, don't you, sir?

13 A. No, I don't.

14 Q. Well then, Doctor, let me put it plainly to you. It
15 does divert the course of this trial from what I'm attempting
16 to prove to something that you want to show for Monsanto and
17 it diverts the attention of the jury to this side issue.
18 Now, please listen to my question, if you would, sir, and
19 respond to that question and bear in mind that Mr. Heineman
20 will have an opportunity to give -- ask you for any
21 explanations or anything else that you want to give.

22 MR. HEINEMAN: Objection, Your Honor, may counsel
23 approach the bench?

24 THE COURT: Yes, you may.

1 (At this time a conference was had at the bench out
2 of the hearing of the jury.)

3 MR. HEINEMAN: Mr. Carr has no right to sit there
4 and instruct this witness to do anything.

5 MR. CARR: Mr. Heineman should have instructed him.
6 The Court has told Mr. Heineman --

7 MR. HEINEMAN: Do you mind if I finish? Do you
8 mind if I finish?

9 MR. CARR: Yeah, I do.

10 MR. HEINEMAN: Well, I'm just devastated. Mr. Carr
11 has no right to sit there and instruct this witness. The
12 Court has instructed the witness, I have been ordered by the
13 Court to admonish the witness, I have done so. The Court has
14 admonished the witness. That's the only people that can
15 admonished this witness. Mr. Carr has no right to do it.

16 THE COURT: He can do that if I allow him to do it,
17 and in my discretionary judgment I feel it is appropriate to
18 do it, that it is done appropriately, and that it is for the
19 purpose of continuing the orderly process of this trial.
20 Your admonishments of this witness have had zero effect, mine
21 have been repeated and have had no effect, because the
22 witness continues to ignore them. In the exercise of my
23 discretion in view of what's gone on with this witness, which
24 has been ridiculous, I think that Mr. Carr's accurately

1 stated and well-tempered requests and explanations to this
2 witness are perfectly in order. They are an aid to the Court
3 in insuring an orderly trial and continuing, attempting to
4 continue in an orderly process this truth seeking procedure.
5 Your objection is overruled. It has no basis in the record.
6 Let's proceed.

7 (The following proceedings were had in open Court.)

8 Q. Doctor, these men in '79 had these symptoms as we
9 have -- as you have previously stated, isn't that correct,
10 sir?

11 A. No.

12 Q. Didn't you -- did you state to the jury this
13 morning that they did have these symptoms in '53.

14 MR. HEINEMAN: Objection, Your Honor, I thought he
15 said '79.

16 Q. I did. Now I'm saying I'm leading to that, counsel.
17 Didn't you say this morning that these were symptoms these
18 men had in '53?

19 A. No, sir.

20 Q. You didn't say that before our break?

21 A. I did.

22 Q. Yes, you did. All right. Now, Doctor, if they are
23 symptoms in 1953, and if they are symptoms in 1949 and if
24 they are symptoms in 1950, they are, are they not, yet

1 symptoms? If that is true, if they were symptoms then, sir,
2 are they not symptoms in 1979?

3 A. No, sir.

4 Q. What's the difference between a person having a
5 fever, calling a fever a symptom in 1949 and that person has
6 a fever in 1979? It is a symptom in 1979 just as it was a
7 symptom in 1949, is it not, sir?

8 A. For fever, yes, sir.

9 Q. Yes. And an aching muscle is a symptom in 1949, is
10 it not, sir?

11 A. Yes.

12 Q. If an aching muscle is a symptom in 1949, an aching
13 muscle is a symptom in 1979, is it not, sir?

14 A. No, sir.

15 Q. Did the -- did the -- did you understand me to say
16 an aching muscle, sir?

17 A. Yes, sir, I heard you.

18 Q. If the man has an aching muscle in 1949, it is a
19 symptom, isn't it, sir?

20 A. Yes, sir.

21 Q. If a man has an aching muscle in 1979, it is a
22 symptom, isn't it, sir?

23 A. No, sir, not in this instance.

24 Q. Doctor, I'm not even talking about a particular

1 instance. I'm talking about a symptom. If a symptom is a
2 symptom in 1949, if it is a sign of a disease process in
3 1949, it is a sign of a disease process in 1979, is it not,
4 sir?

5 A. No, sir.

6 Q. Doctor, did the definition of symptom change in the
7 medical world between 1949 and 1979?

8 A. No, sir.

9 Q. The definition of a symptom is a sign of a disease,
10 isn't it, sir? Isn't that correct, sir?

11 A. An indication.

12 Q. An aching muscle --

13 A. It might be, might be an indication.

14 Q. An aching muscle in 1949 was a symptom, was it not,
15 sir?

16 A. At that time, yes.

17 Q. An aching muscle in 1960 is a symptom, isn't it,
18 sir?

19 A. No.

20 Q. Why isn't an aching muscle in 1960 a symptom, sir?

21 A. Because it could be a complaint, sir, and a
22 complaint which is not verified.

23 Q. Doctor, nobody's talking about verification. We're
24 talking about symptoms.

1 A. We're talking about a symptom which could be a
2 complaint.

3 Q. No, Doctor, you misunderstood me.

4 A. No, I didn't.

5 Q. I understand why now you're saying-- I didn't say a
6 complaint. Surely, he could be lying in 1949, he could be
7 lying in '50, he could be lying in 1953, he could be lying
8 before the Compensation Commission in 1956, he could be lying
9 in '57, he could be lying in '60, he could be lying in 1979.
10 Now, put that aside, sir, and I'm talking about the symptom
11 aching muscle.

12 A. Yes, sir.

13 Q. Not the complaint of an aching muscle, I'm talking
14 about the symptom aching muscle. You got that in your mind,
15 Dr. Suskind, symptom?

16 A. No, sir, I don't.

17 Q. Put that in your mind please, sir. I'm talking
18 about the symptom aching muscle. Now, do you have that in
19 your mind, sir?

20 A. No, sir.

21 MR. CARR: Your Honor, would you direct the witness
22 to focus his attention on what I'm saying, the symptom aching
23 muscle.

24 THE COURT: Doctor, it's been stated three times,

1 it's been repeated a couple times. I think it's clearly
2 delineated. Please take it as such and use that as the basis
3 for the answer to your questions.

4 A. I'll try, sir.

5 Q. Doctor, the symptom aching muscle, if it is a
6 symptom of a disease process in 1949, an aching muscle is a
7 symptom of a disease process in 1950, isn't it, sir?

8 A. No, sir.

9 Q. Why -- if it's a symptom of disease process in
10 1949, sir, why isn't it a symptom of a disease process in
11 1950?

12 A. Because it could be, it could be, sir, it could be,
13 sir, that the reality of that symptom no longer exists, but
14 the person complains.

15 Q. Doctor you're saying that--

16 A. And he can't--

17 Q. You're saying that he doesn't have a symptom. No,
18 I'm telling you to assume that he has the symptom, Doctor,
19 aching muscle. Now, are you assuming that, sir? He has the
20 symptom, he has an aching muscle in 1949. Have you got that
21 assumed, sir?

22 A. I do.

23 Q. Also assume now that he has the symptom aching
24 muscle in 1950. Will you assume that, sir?

1 A. Yes, sir.

2 Q. Have you got that, sir?

3 A. I believe I do.

4 Q. All right. Now in both instances he's got the
5 symptom aching muscle, right, sir? Are you with me? '49
6 he's got the symptom aching muscle, 1950 he's got the symptom
7 aching muscle. Are you with me, Doctor?

8 A. Yes, sir.

9 Q. All right. Now, that aching muscle symptom is a
10 sign of a disease process in 1949, isn't it, sir?

11 A. Might be.

12 Q. And that aching muscle symptom is a sign of a
13 disease process in 1950, isn't it, sir?

14 A. No, sir.

15 Q. Doctor, do you have in your mind what I suggested
16 to you?

17 A. I do, sir, very clearly.

18 Q. Are you assuming now that he has, in fact, got an
19 aching muscle?

20 A. I am, sir.

21 Q. In '49?

22 A. Yes, sir.

23 Q. And you're assuming that he's got the aching muscle
24 in 1950?

1 A. Yes, sir.

2 Q. And if he's got the aching muscle in 1949, it's a
3 sign of a disease process, is it not, sir?

4 A. Yes, sir.

5 Q. If he's got the aching muscle in 1950, it's a sign
6 of a disease process, isn't it, sir?

7 A. Not necessarily, no, sir.

8 Q. It's not necessarily a sign of a disease process in
9 1949 either, is it, sir?

10 A. That's true, sir.

11 Q. Doctor, I want you to assume as you said in 1949 it
12 is a sign of a disease process. Are you assuming that, sir?

13 A. Umhm.

14 Q. If it was a sign of a disease process in '49, it
15 can well be a sign of a disease process in 1950, can it not,
16 sir?

17 A. Might, it doesn't have to.

18 Q. Doctor, I didn't say it had to, did I, sir?

19 A. Umhm.

20 Q. I mean, his aching muscles in 1950 could be because
21 he had a potassium deficiency or a calcium deficiency, but
22 still that's a disease process nevertheless, isn't it, sir?

23 A. Yes, sir.

24 Q. Now, I didn't say that it was a TCDD aching muscle,

1 did I, sir?

2 A. No, you did not, sir.

3 Q. No, I just said he had an aching muscle?

4 A. Yes.

5 Q. So if he's got an aching muscle in 1950, that's a
6 sign of a disease process, isn't it, sir?

7 A. Not necessarily, no, sir.

8 Q. What else could it be a sign of, sir?

9 A. It could be a complaint of an aching muscle.

10 Q. No, Doctor. We're not talking about a complaint.

11 I'm talking about that he has got the aching muscle. Are you
12 assuming that, sir, that he's got the aching muscle? Are you
13 assuming that he's got the aching muscle in 1950?

14 A. No, I'm not assuming that, sir.

15 MR. CARR: Your Honor, would you direct the witness
16 to assume that the man has an aching muscle in 1950.

17 THE COURT: Doctor, you are so directed to assume.

18 Q. Now are you assuming it, sir?

19 A. I am.

20 Q. And that can well be a sign of a disease process in
21 1949, can it not, sir?

22 A. Could be, sir, yes.

23 Q. In your judgment in 1949 it was a sign of TCDD
24 exposure, wasn't it, sir?

1 A. Yes, sir.

2 Q. In 1950 he's got the aching muscle. That could
3 well be a sign of a disease process in 1950, couldn't it,
4 sir?

5 A. It could be, sir.

6 Q. And if he's got it in '51, it could be as well,
7 could it not, sir?

8 A. If it's real.

9 Q. Yeah, you're assuming it's real. If he's got it in
10 '52, it could be a sign of a disease process, right, sir?

11 A. Yes, sir.

12 Q. '53 it could be a sign of a disease process?

13 A. No, sir.

14 Q. Could not be a sign of a disease?

15 A. No, sir.

16 Q. Doctor, are you assuming he's got it in '53?

17 A. No, I'm not assuming that.

18 MR. CARR: Your Honor, would you direct the witness
19 to assume that's he's got an aching muscle in 1953.

20 MR. HEINEMAN: Objection, your Honor. He didn't ask
21 him to assume that.

22 THE COURT: I believe he is now. Doctor, please
23 assume it. If it wasn't clear before, you are to assume it
24 now.

1 Q. If he's got the aching muscle in 1953, it can well
2 be a sign of a disease process, can it not, sir?

3 A. Might be.

4 Q. It can be, can it not, sir?

5 A. Might be, sir.

6 Q. Is that the same as--

7 A. I'm answering it as correctly as I know how. It
8 might be.

9 Q. My question though, sir, is--

10 A. It could not be as well.

11 Q. Doctor, my question to you is it can be a sign of a
12 disease process, can it not, sir?

13 A. It might be, sir, yes.

14 MR. CARR: Your Honor, would you direct the witness
15 to answer my question without the addition to it?

16 A. I'm answering it in the best way I know how, sir.

17 Q. Doctor, you can answer it, yes, it can be, or yes,
18 it cannot be.

19 MR. HEINEMAN: Objection, your Honor--

20 Q. Or no, it cannot be.

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

23 THE COURT: Yes.

24 (At this time a conference was had at the bench out.

1 of the hearing of the jury.)

2 MR. HEINEMAN: While Mr. Carr may not like the
3 answer it might be, it is a clearly responsive answer to the
4 question. The witness -- there's no requirement under
5 Illinois law for this witness to answer a question yes or no
6 just because that's what Mr. Carr wants.

7 THE COURT: The question was a clear question, which
8 called for a yes or no answer. There is a difference between
9 might and can. Might deals with possibilities, can deals
10 with capabilities. It is elementary English. The question is
11 clear. This is a learned individual on the stand who
12 understands the English language. He was not responsive to
13 the question. Mr. Carr's request was proper and is well
14 directed. That question calls for a yes or no answer. It
15 calls for an answer different than the one he gave. Your
16 objection is overruled.

17 (The following proceedings were had in open Court.)

18 THE COURT: Doctor, that question calls for a yes or
19 no answer. Please answer it accordingly.

20 A. Could you repeat the question please.

21 (Court reporter read back the question.)

22 A. It can be, sir.

23 Q. Thank you, sir. Now, Doctor, it can be a sign of a
24 disease process if he has it in 1956, can it not?

1 A. It can, sir.

2 Q. It can be a sign in 1958, can it not, sir, if he
3 has it?

4 A. Could be.

5 Q. It can be a sign in 1960, can't it, sir, if he has
6 an aching muscle in 1960?

7 A. Yes.

8 Q. It can be a sign in 1962, can it not, sir, if he
9 has it in 1962?

10 A. It could be in 19-- go ahead.

11 Q. It could be in 1970, couldn't it, sir?

12 A. Umhm.

13 Q. It could be a sign of a disease process in 1979,
14 couldn't it, sir?

15 A. It could be.

16 Q. It could be a sign of a disease process in 1986,
17 couldn't it, sir?

18 A. It could be, sir.

19 Q. Thank you, Doctor. And, Doctor, you found in 1960
20 or at least it was reported that you said in 1960 that these
21 typical symptoms were common to both the German TCP accident
22 or exposure and the Monsanto TCP accident or exposure, did
23 you not, sir, or is it not reported that you said that, sir?

24 MR. HEINEMAN: Your Honor, objection. I believe

1 that question has already been asked and answered before the
2 last break?

3 A. I didn't say that, sir.

4 THE COURT: I don't believe it has. Objection is
5 overruled.

6 A. Would you ask the question again, sir? What is it
7 you'd like to know?

8 Q. It is reported in Plaintiffs' Exhibit 1459, is it
9 not, sir, that in close checking the varying secondary
10 symptoms once termed bizarre, it developed that all of the
11 typical symptoms were common to both the German and Monsanto
12 cases with the exception of shortness of breath and
13 intolerance to cold, isn't that correct, sir?

14 A. This is recorded in that memorandum. I don't know
15 whether -- I don't believe I said it, but it was said, sir.

16 Q. Well, Doctor, whether you said it or not, aren't
17 these problems that were in common with both exposures?

18 A. That is how it reads, sir.

19 Q. No, Doctor. I don't care how it reads. Isn't it a
20 fact that these are problems that were in common with both
21 exposures?

22 A. Probably were, sir.

23 Q. Not probably, sir. There's no speculation about
24 that. They either were in common or they weren't in common.

1 Were they in common in both exposures, Doctor?

2 A. I am reading from this report, sir, and --

3 Q. Doctor, I'm not asking you to read from that
4 report. I'm asking you to give us your scientific judgment
5 weren't these findings in common in both accidents?

6 A. From what I know about that accident, they were,
7 sir.

8 Q. Thank you, Doctor.

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

11 MR. CARR: Yes, Your Honor.

12 THE COURT: We'll break at this time. We'll resume
13 testimony at 1:15. The admonishments that I've given you
14 earlier will apply during this break also. Court's in recess
15 for lunch.

16 (At this time a short recess was taken.)

17
18 (The following proceedings were had in open Court.)

19 Q. Dr. Suskind, you have found that the disabling
20 symptoms that we've talked about did keep men from their jobs
21 for as much as two years, did you not, sir?

22 A. I would have to look that up, but I think that
23 there are some that were out for two years.

24 Q. Didn't you also report that if the disabling

1 symptoms that kept them from their Jobs for as long as two
2 years were the severe aches and pains, fatigueability, and
3 irritability?

4 A. No, sir.

5 MR. CARR: Could you give the witness Plaintiffs'
6 Exhibit 1728, his report made in 1973.

7 Q. Doctor, turn to Page 4 of that exhibit please.

8 A. Yes, I did say that, sir.

9 Q. Doctor, this exhibit is your presentation to the
10 National Institute of Environmental Health Services at the
11 Triangle Park, North Carolina on April 3rd, 1973, is it not,
12 sir?

13 A. Yes, sir.

14 Q. You did report to that group that the disability
15 symptoms that kept the men from their jobs for as long as two
16 years were the severe --

17 A. Yes, sir, I did say that.

18 Q. Dr. Suskind--

19 MR. CARR: Your Honor, would you direct the witness
20 to let me finish my question.

21 THE COURT: Doctor, I don't think he was done.
22 Please wait until the question is finished.

23 Q. Doctor, you did report at that time, did you not,
24 that the disabling symptoms that have kept the men from their

1 jobs for as long as two years were the severe aches and
2 pains, fatigueability, and irritability?

3 A. Yes, sir.

4 Q. I take it you had forgotten that that was a fact
5 when you gave your earlier answer?

6 A. No, sir.

7 Q. Doctor, you mean you had not forgotten that you
8 made this report, and you deliberately said something that
9 you knew wasn't true?

10 A. No, that's not so, sir.

11 Q. Doctor, did you know at the time you made this
12 statement that these men were kept from their jobs for as
13 long as two years?

14 A. Yes, sir.

15 Q. And did you know that they were kept from their
16 jobs for as long as two years because of the severe aches,
17 the pains, the fatigueability, and the irritability?

18 A. Yes, sir.

19 Q. You knew both those things were fact when I asked
20 you the question, and you said, no, it wasn't true, is that
21 correct?

22 A. No, I didn't say it wasn't true. I said no, sir.

23 Q. Doctor, I asked you wasn't it a fact that the
24 disabling symptoms that kept the men from their jobs for as

1 long as -- for as much as two-- for as long as two years were
2 the severe aches, pains, fatigueability and irritability.

3 Didn't I ask you that, sir?

4 A. Yes, sir, you did.

5 Q. Wasn't your response to that question no?

6 A. Yes, it was.

7 Q. That wasn't true, was it, sir?

8 A. No, it was true.

9 Q. Sir?

10 A. It was true that -- that I said -- that I said no
11 to your question, sir.

12 Q. You said no, that isn't true?

13 A. No, I said no. I didn't say it wasn't true.

14 Q. Well, Doctor, I asked wasn't it true that, and then
15 I went on and repeated the statement. Didn't I say that,
16 sir? Didn't I ask you wasn't it true that, Doctor, these
17 things occurred?

18 A. Yes, sir.

19 Q. You said no, it wasn't true, didn't you, sir?

20 A. That's true.

21 Q. Sir?

22 A. I said no, right.

23 Q. No, it wasn't true?

24 A. Yes. I said no, it wasn't true.

1 Q. When in fact it was true, isn't that correct, sir?

2 A. From the limit of this statement, yes, that's true.

3 Q. You knew at the time you said, no, it wasn't true
4 that in fact it was true, did you not, Doctor?

5 A. Yes, but not for all the people.

6 Q. Doctor, I didn't say for all the people, did I, in
7 my question?

8 A. But I assumed you were talking about --

9 Q. My question was it kept men from their jobs, isn't
10 that right, sir?

11 A. Yes, sir.

12 Q. And you just got through saying, no, that wasn't
13 true, but now you say it is true, don't you, sir?

14 A. It isn't so for all of the people that were kept
15 from their jobs.

16 Q. Doctor, you know good and well that I didn't say
17 all of the people.

18 A. If you didn't, then it's so.

19 Q. But I didn't say it, did I, sir?

20 A. I thought that you said that it was the
21 generalized, the severe aches and pains and fatigueability
22 and irritability that kept these men from their jobs, and I
23 said no, because there were others that had other things.

24 Q. Doctor, you heard exactly what I said. What I said.

1 was I read exactly from your report. I said it's true, is it
2 not, that the disabling symptoms which kept men from their
3 jobs were these symptoms, and you said, no, that isn't true,
4 didn't you, sir?

5 A. Yes, I did.

6 Q. In fact it is true, isn't it, sir?

7 A. For some of the people.

8 Q. Doctor, is it a fact that it's true that these are
9 the disabling symptoms that kept men from their jobs? Is
10 that true or false, sir?

11 A. In some instances, yes, yes.

12 Q. Is the statement that I said true, sir?

13 A. In some instances, yes, sir.

14 Q. Is the statement that I said true, sir?

15 A. I'm answering it as best I know how.

16 MR. CARR: Your Honor, would you direct the witness
17 not to give me a categorical answer to my question.

18 THE COURT: Doctor, I think it does call for a yes
19 or no answer. Please answer it accordingly.

20 A. Yes, sir.

21 Q. And when you told us a moment before that it wasn't
22 true, you simply had forgotten or were mistaken?

23 A. I didn't forget, sir.

24 Q. Doctor, did you deliberately misstate the fact to

1 the jury?

2 A. No, interpreted your question differently, sir.

3 Q. Doctor, you're a scientist, and you use words very
4 well, you've written dozens of papers, you been a -- I'm sure
5 a teacher and many other things. You know how to use words,
6 and you're capable, there's nothing wrong with your hearing.
7 You been understanding me perfectly. You knew what I said,
8 didn't you, sir?

9 A. I assumed that you were saying something that I
10 understood, and I did.

11 Q. You assumed that I was saying something that you
12 understood. You heard what I said, the Court heard what I
13 said, the jury heard what I said, and you heard what I said.

14 A. Yes, sir.

15 Q. You said it wasn't true, didn't you, sir?

16 A. I said it wasn't true.

17 Q. When in fact it was true?

18 A. My interpretation is that it wasn't true.

19 Q. Your interpretation now is that it is true, isn't
20 it, sir?

21 A. If you're just limiting yourself to --

22 Q. Excuse me, Doctor, your interpretation now is that
23 it is true, isn't it, sir?

24 A. Yes, if you're limiting yourself to pains,

1 nervousness and fatigue.

2 Q. I'm not limiting myself to anything. I'm giving you
3 the same question in the same language at the same time. On
4 the one event you say it isn't true. On the other event you
5 say it is true, isn't that correct, sir?

6 A. No, sir, they're two different situations.

7 Q. Did I ask you two different questions, Doctor?

8 A. No, you asked me one question which could be
9 interpreted different.

10 Q. The same question each time, did I not, sir?

11 A. Yes, sir.

12 Q. All right, Doctor. And you gave me two different
13 answers, didn't you, Doctor?

14 A. No, I gave you one answer, sir.

15 Q. Oh, no, Doctor. You said in one instance it wasn't
16 true and in the other instance you said it was true.

17 A. No, I gave -- if you're limiting yourself to one --

18 Q. Doctor, I'm not limiting myself to anything. I'm
19 asking the questions and you're answering them.

20 A. Precisely. As precise as I can, sir.

21 Q. Yes, and you've answered them precisely
22 diametrically opposite on the same occasion, haven't you?

23 A. No, I haven't, sir.

24 Q. All right. Doctor, let's pass on to the next

1 question now. These -- these skin problems that you found
2 with these men that you studied, their chloracne, the changes
3 that you found, they were cellular changes, weren't there,
4 sir?

5 A. Yes, there were.

6 Q. And these cellular changes were, oh, just like
7 teratogenic effects caused by dioxin, weren't they, sir?

8 A. No, sir.

9 Q. Doctor, didn't you report to this conference that
10 these changes could be equated, should be equated with the
11 teratogenic effect of dioxin? Didn't you report that, sir?

12 A. I said they might be.

13 Q. No, you said should be, Doctor.

14 A. Where, sir, where?

15 Q. The last page of 1728, Doctor.

16 A. I said perhaps.

17 Q. Doctor, would you look at the last page?

18 A. Yes, I do. May I read it?

19 Q. Doctor, will you look at the last page?

20 A. I have it here.

21 Q. You're there at the last page?

22 A. Yes, sir. It says which perhaps.

23 Q. Doctor, if you don't mind, let me answer the
24 question please, sir. Did you not say on that last page, the

1 last sentence of this report " the most intriguing cellular
2 effect was the modulation of sebum forming cells to keratin
3 forming cells, a change which perhaps should be equated with
4 the teratogenic effect of dioxin?

5 A. I said that, yes, sir.

6 Q. Didn't you say that, sir?

7 A. Yes, sir.

8 Q. You are telling this conference there that you saw
9 a change in the cells, didn't you, sir?

10 A. We sure did.

11 Q. You're saying at that time that perhaps this should
12 be equated with the teratogenic effect of dioxin?

13 A. Yes, it was in the hypothesis, sir.

14 Q. Doctor, you knew that dioxin had teratogenic
15 effects, you know that as well, don't you, sir?

16 A. At that time we did know it for animals, yes, sir.

17 Q. You found it in humans, didn't you, sir?

18 A. No, sir.

19 Q. Didn't you find a change that you said--

20 A. No, sir, I said it should be equated.

21 Q. Excuse me, Doctor. Let me finish my question.

22 A. I didn't find it, sir.

23 MR. CARR: Your Honor, would you direct the witness
24 to let me finish my question.

1 THE COURT: Doctor, you interrupted the question.
2 You can't possibly answer a question if you haven't heard
3 what the question is. Now, please wait until the question is
4 finished. Mr. Carr, you may proceed.

5 Q. Didn't you find, Doctor, that the sebum forming
6 cells were modulated into keratin forming cells?

7 A. Yes, we did, keratin, the word is keratin, sir.

8 MR. CARR: Your Honor, would you direct the witness
9 to let me finish the question.

10 THE COURT: Doctor, again let him finish.

11 Q. Doctor, the word modulation means change, does it
12 not, sir?

13 A. It means alteration, yes, it means change.

14 Q. Alteration means change, doesn't it, sir?

15 A. Right.

16 Q. Sir?

17 A. Yes.

18 Q. You said here that the sebum forming cells changed
19 to what, sir?

20 A. Keratin forming cells.

21 Q. And keratin forming cells is a different kind of
22 cell than a sebum forming cell, isn't it, sir?

23 A. It's a different normal cell, sir, yes.

24 Q. It is a different kind of cell, isn't it, sir?

1 A. It's a different normal cell.

2 Q. Doctor, is it a different kind of cell?

3 A. Yes.

4 Q. You found that this cell was -- one cell was
5 changed to another kind of cell, didn't you, sir?

6 A. Yes, we did.

7 Q. And you know that that has been reported to occur
8 in animals, don't you, sir?

9 A. No, sir.

10 Q. You don't know that, sir?

11 A. No.

12 Q. Haven't you studied that, sir, and didn't you just
13 get through saying a moment ago that you -- it had been
14 reported in animals? Didn't you just tell us that, Dr.
15 Suskind?

16 A. Not -- not sebum forming cells--

17 Q. Excuse me. Didn't you just tell us--

18 MR. HEINEMAN: Excuse me, Judge. He interrupted
19 the answer. May the witness answer the question?

20 THE COURT: Overruled. It was not responsive.

21 A. I did not tell you that, sir.

22 Q. You didn't tell us that?

23 A. No.

24 Q. Excuse me, Doctor, let me finish my question.

1 A. Please finish, sir.

2 Q. Thank you. If you would allow me, Doctor, I would
3 appreciate it. Didn't you tell us just a moment ago that
4 teratogenic effects have been found in animals?

5 A. I did indeed.

6 Q. All right. And, Doctor, this is a teratogenic
7 effect that you have now found in humans?

8 A. It is not so, sir.

9 Q. Oh, isn't a change --

10 A. No, it said it --

11 Q. Doctor, let me finish my question please. Doctor,
12 isn't a change from one kind of cell to another kind of cell,
13 what kind of change is that?

14 A. It's modulation, and it occurs in acne vulgaris,
15 too, sir.

16 MR. CARR: Your Honor, would you direct the witness
17 to answer my question and not go beyond it.

18 MR. HEINEMAN: Objection, Your Honor. May counsel
19 approach the bench?

20 THE COURT: Sure.

21 (At this time a conference was had at the bench out
22 of the hearing of the jury.)

23 MR. HEINEMAN: He just asked the witness what kind
24 of a change is it. He's talking, he's asking a dermatologist

1 about changes in skin cells.

2 MR. CARR: He went on to --

3 MR. HEINEMAN: What kind of change is it? He said,
4 he told him the kind of change it was as occurs in acne
5 vulgaris.

6 THE COURT: No, that's not what he said. He asked
7 what kind of change this particular thing was. He says it
8 was a modulation, and he then said it also occurs in acne
9 vulgaris. He was not asked anything about acne vulgaris. He
10 was asked about a particular kind of change -- of skin cell
11 change. He deliberately went beyond the scope of the
12 question, and that is as plain as the light of day. It was
13 directed to a particular change. He injected another type of
14 change, which was not a part of the question.

15 MR. HEINEMAN: Your Honor, I think what the witness
16 is saying is that that is the kind of change that occurs in
17 acne vulgaris, that it's not a different kind of change.

18 THE COURT: That is what he said. That's not what
19 he was asked. That is the whole problem here. He was asked
20 about a particular change.

21 MR. HEINEMAN: He was asked what kind of change is
22 it.

23 THE COURT: He was asked about a particular change.
24 He was not asked for similar types of changes or to compare

1 it to a particular other type of change. The question was
2 precise, it was framed for the precise answer. You got an
3 answer that deliberately went beyond it. He continually has
4 been going beyond it and that's what I have asked you to
5 admonish him about. That's what I have admonished him about,
6 and he keeps repeating it, and you keep coming up here
7 defending his violation of the order.

8 MR. HEINEMAN: Judge, I don't regard what he just
9 did as a violation of the order. He was asked what kind of
10 change --

11 THE COURT: There's no question it's a violation of
12 the order. Your objection is overruled. Let's continue.

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

14 Q. Doctor, what is a teratogenic effect?

15 A. A teratogenic effect is an effect which produces
16 birth defects --.

17 Q. And--

18 A. May I finish, sir?

19 Q. Have you finished --

20 A. No, I have not finished.

21 Q. -- Answering my question what is a teratogenic
22 effect?

23 A. I have not finished, sir.

24 Q. Go ahead, sir.

1 A. It is an effect on the genetic makeup of cells,
2 reproductive cells, reproductive cells, not somatic cells,
3 and there's a difference. Reproductive cells are like ova
4 from the female, which go on, if fertilized, to produce an
5 offspring, and what I -- and that -- and if the -- if the
6 agent has an effect on the reproductive cells which produce
7 birth defects, that is a teratogenic effect.

8 Q. And you said here, Doctor, did you not, that this
9 change from one type of cell to another type of cell might
10 well be equated to the teratogenic effects of dioxin?

11 A. I said perhaps should be equated.

12 Q. Yes, perhaps it should be equated.

13 A. This was a theory.

14 Q. Didn't you say that, sir?

15 A. It's a theory, sir.

16 Q. Excuse me, Doctor, I know it's a theory, but it was
17 a theory that you thought important enough to point out to
18 this meeting or this conference at the Research Triangle Park
19 in 1973?

20 A. It was an informal meeting, sir.

21 Q. And, Doctor, you felt it was important enough to
22 suggest to this conference that it might or perhaps should be
23 equated to the teratogenic-- to the known teratogenic effect
24 of dioxin in animals, isn't that right, sir?

1 A. I didn't say known. I said teratogenic effect.

2 Q. Doctor, it is a known, there is a known teratogenic
3 effect of dioxin in animals, is there not?

4 A. In certain animals, sir.

5 Q. Isn't that correct, sir?

6 A. In certain animals, yes, sir.

7 Q. Is that a yes to my--

8 A. That is a yes, sir, to certain animals.

9 Q. What you told this conference was this is some
10 intriguing evidence is that perhaps this, too, should be
11 equated with that which occurs in animals, isn't that right,
12 sir?

13 A. I said we should be thinking of it in those terms,
14 yes.

15 Q. Is that a yes to my question?

16 A. Yes, it is a yes.

17 Q. Thank you, Doctor. Doctor, you also have -- you
18 also believe, do you not, sir, that the material involved in
19 this process was responsible for over two hundred cases of
20 chloracne and systemic problems?

21 A. No, sir.

22 Q. Doctor, haven't you stated that before another
23 organization? Haven't you stated that to be a fact, sir,
24 that the material that was in this process at Nitro resulted.

1 in over 200 cases of chloracne and systemic effects? Didn't
2 you say that, Dr. Suskind?

3 A. Yes, sir.

4 Q. Now, Doctor, you just got through telling us that
5 it was-- did you lie to that meeting where you said it?

6 A. No.

7 Q. Did you lie to us?

8 A. No, I'm not lying. I want to tell the truth, sir.

9 Q. I know you do, Doctor. I'm trying to help you do
10 that.

11 A. The truth is that it produced over 200 cases of
12 chloracne and some of them had systemic effects. Not all of
13 the 200 had systemic effects, sir.

14 Q. Doctor, did I say that all had it?

15 A. Yes, you did, sir. That's what I --

16 Q. What I said to you, Doctor-- Did I not say to you
17 that you reported that the material involved in this process
18 resulted in over 200 cases of chloracne and systemic
19 effects? Isn't that what I asked you, sir?

20 A. That's what you asked me.

21 Q. That's true, isn't it, sir?

22 A. No, not the way you put it, sir.

23 Q. Doctor, that's the way you put it. I read exactly
24 what you said.

1 (Plaintiffs' Exhibit 1760 marked for
2 identification.)

3 Q. Hand you now what's been marked as Plaintiffs'
4 Exhibit 1760 and ask you if you recognize that as a report
5 you presented to the American Academy of Dermatology in
6 Chicago, in Chicago, Illinois on December 10, 1957?

7 A. Umhm.

8 Q. And, Doctor --?

9 MR. CARR: Offer this exhibit into evidence if it
10 please the Court.

11 THE COURT: Any objection?

12 MR. HEINEMAN: No objection, Your Honor.

13 THE COURT: It's admitted without objection.

14 Q. Doctor, would you turn to Page 2 in the last
15 sentence on that page. Does it not read, sir, the material
16 was obtained from a process exposure which resulted in over
17 200 cases of chloracne and systemic effects. You see that at
18 the bottom of Page 2, Doctor?

19 A. No, I do not, sir.

20 Q. You don't see it at the bottom of the page?

21 A. Oh, yes, sir. Okay, yes, I see it.

22 Q. Now, that is language that you used, isn't it, sir?

23 A. Yes, sir.

24 Q. It's not language that I used, is it, sir?

1 A. No, sir.

2 Q. It's language that you used in 1957 to describe
3 what occurred at Nitro, isn't that right, sir?

4 A. Correct.

5 Q. Yes. And so this material, the TCP, was obtained
6 from a process exposure which resulted in over 200 cases of
7 chloracne and systemic effects, was it not, sir?

8 A. As it states, sir, yes.

9 Q. Doctor, it is in this same report that you point
10 out that the acnegenic effect that had resulted in these over
11 200 cases was the reaction product was the 2,3,7,8 TC--
12 tetrachlordibenzo-p-dioxin, isn't that correct, sir? Page 8,
13 Dr. Suskind, last sentence, second paragraph.

14 A. Yes.

15 Q. Doctor, it is also this exhibit in which you point
16 out on Page 10 that the other samples of sodium
17 trichlorophenate prepared by other methods other than the
18 Monsanto method failed to produce acneiform lesions, isn't
19 that correct, sir?

20 A. That's what I state in that paper, sir.

21 Q. Yes. Doctor, in 1980 you made another report, did
22 you not, sir, this time to the international workshop on
23 chemical and epidemiological followup after areawide chemical
24 contamination sponsored by the National Academy of Sciences

1 in Washington, D.C. on March 18th, 1980, did you not, sir?

2 A. I was there, and I presented two papers, yes, sir.

3 (Plaintiffs' Exhibit 1761 marked for
4 identification.)

5 Q. Hand you what's been marked Plaintiffs' Exhibit
6 1761 and ask you if that is not a copy of the paper you
7 presented at that conference at that time, sir?

8 A. I believe it is, sir.

9 MR. CARR: Offer 1761 into evidence if it please the
10 Court.

11 THE COURT: Any objections?

12 MR. HEINEMAN: No objection, Judge.

13 THE COURT: It's admitted without objection.

14 MR. CARR: Your Honor, I have the tables that are a
15 part of that exhibit that I would like to pass to the jury at
16 this time.

17 THE COURT: Fine.

18 MR. CARR: For the record the material that has
19 been passed to the jury, Your Honor, is Tables 1, 2, and 3
20 that are attached to this exhibit that the Court has.

21 THE COURT: Thank you.

22 Q. Doctor, in the course of your analysis of the
23 various problems that have occurred from exposure to dioxin
24 you have found reports of at least two fatalities from

1 intoxication in these processes, have you not, sir?

2 A. I personally, sir?

3 Q. You have found it to be reported, sir, in your
4 analysis of other examinations, other reports, other studies
5 that at least two deaths, two fatalities resulting from this
6 poisoning?

7 A. No, sir.

8 Q. Doctor, turn to Page 3 of the exhibit that you
9 have. You find there, sir, where they're describing the
10 Jirasek report where you say " the authors describe the two
11 fatalities as a result of the intoxication, one of severe
12 atherosclerosis with porphyria and another from acute
13 pentachlorophenol intoxication". Do you not say that, sir?

14 A. Yes, indeed I do. That's the Jirasek report.

15 Q. And those were two fatalities described, were they
16 not, sir?

17 A. Yes, not from TCDD.

18 Q. Now, Doctor, with respect to the tables that were
19 attached here, the Table 1 you list the problems that you
20 found in these workers that were exposed in the 1949
21 reaction, do you not, sir?

22 A. I do, sir.

23 Q. In the order of their occurrence?

24 A. In the order of their incidence, correct.

1 Q. You found that the chloracne, although you don't
2 call it chloracne there, you are describing in fact
3 chloracne, aren't you, sir?

4 A. I am.

5 Q. Occurred most often, and next would have been the
6 aches and pains in the muscles, fatigue, and then
7 nervousness, irritability, insomnia and on down to the
8 decrease in libido, shortness of breath, discolored or
9 darkening skin, dizziness and intolerance to cold, correct,
10 sir?

11 A. Correct.

12 Q. Doctor, on Table 2 you report as far as the
13 clinical findings are concerned-- now, clinical is something
14 that you find by your examination, correct, sir?

15 A. Correct.

16 Q. And laboratory is something the laboratories find,
17 correct, sir?

18 A. Correct.

19 Q. You found in this group of workers acne, liver
20 enlarged and a loss of sensation in the feet, correct, sir?

21 A. In one individual, yes.

22 Q. You also found, did you not, Doctor, there were
23 increased total serum lipids, increased prothrombin time?

24 A. Correct.

1 Q. Increased glucuronates?

2 A. Right.

3 Q. That the muscle biopsies were normal, but the
4 peripheral nerve biopsy resulted in destruction of myelin
5 sheaths and nerve fibers?

6 A. We did indeed say that, sir.

7 Q. Doctor, your later work, however, I think we
8 pointed out earlier in your later reports you left out the --
9 yes, here it is -- you left out the destruction of the nerve
10 fiber, didn't you, sir?

11 A. Not by intent.

12 Q. Excuse me, Doctor. You justified for a long period
13 of time in front of this jury your leaving out of later
14 reports this destruction of nerve fibers. Do you recall you
15 went a long, long, took a considerable amount of time to
16 convince you that there was destruction, and now you say you
17 left it out but not by intent. That suggests--

18 A. Correct.

19 Q. That suggests, Doctor, that it was an accidental
20 leaving out?

21 A. No, not necessarily.

22 Q. Oh, isn't it, sir if you say it was not by intent,
23 then it has to be by accident or not deliberately or not
24 thought of, isn't that right, sir?

1 A. No.

2 Q. If it wasn't by intent?

3 A. No.

4 Q. Doctor, if you didn't leave it out by intent, you
5 left it out by accident then, is that correct, sir?

6 A. Not necessarily.

7 Q. What other explanation could there be, sir?

8 A. We simply determined that the myelin sheath was
9 enough to describe the nerve destruction.

10 Q. Then you left it out, and you deliberately decided
11 not to mention the nerve fiber. That would have been a
12 leaving it out by intent, wouldn't it, sir?

13 A. It was by --

14 Q. Doctor, my question is it would have been leaving
15 it out by intent, wouldn't it, sir?

16 A. Probably.

17 Q. Not probably. If you decided that to say myelin
18 degeneration was enough, and you're not going to say about
19 the nerve destruction, the fiber destruction, then you left
20 it out on purpose, you left it out intentionally, didn't you,
21 sir?

22 A. Frankly I can't recall.

23 Q. Doctor, if you don't recall, why do you say here
24 that you left it out not by intent, and you spent hours, we

1 spent hours showing that you left it out deliberately. Now
2 you're saying you didn't leave it out deliberately.

3 A. The fact that's it's left out is of no importance,
4 sir.

5 Q. Now, Doctor, now that's not your judgment to make.

6 A. Yes, it is. I have--

7 Q. No, Doctor, that's this jury's judgment to make
8 whether or not it's important. What is for you to say, sir--

9 A. The importance of my --.

10 MR. CARR: Your Honor, would you ask this witness
11 to--

12 THE COURT: Doctor, Doctor, you don't have a
13 question in front of you to be responded to. Wait until the
14 questions are answered -- asked and then answer them please.

15 Q. Doctor, did you leave it out by intent or not?

16 A. I decided to leave it out, sir.

17 Q. Then you did leave it out by intent, is that
18 correct?

19 A. It was my judgment that it wasn't necessary.

20 Q. Excuse me, Doctor. Could you answer my question
21 please.

22 A. Yes.

23 Q. You did leave it out by intent?

24 A. Right.

1 Q. Just a moment ago you told this jury that you
2 didn't leave it out by intent.

3 A. Perhaps I misspoke at the time, sir.

4 Q. Perhaps you did. Doctor, the Table No. 3 shows,
5 does it not, the clinical features of human exposure to TCDD?

6 A. Yes, as well as other things.

7 Q. No, Doctor, what you said here is the clinical and
8 laboratory findings, human exposure to TCDD, did you not,
9 sir?

10 A. Yes, that's part of the title, sir.

11 Q. No, it's TCDD in 2,4,5-T and/or TCP and PCB,
12 correct, sir?

13 A. Correct, sir.

14 Q. It's the TCDD which is the subject, isn't it, sir?

15 A. Here it is, but not this chart.

16 Q. Doctor, this chart refers to what -- when you say
17 here it is, you're talking about this chart, this table,
18 aren't you, sir?

19 A. Correct, sir.

20 Q. Sir?

21 A. Correct.

22 Q. And this chart refers to human exposure to TCDD
23 whether it's found in 2,4,5-T or in trichlorophenol or in
24 pcb's, isn't that correct, sir?

1 A. TCDD is not found in pcb's, sir.

2 Q. Doctor, the Yusho study in Japan suggests that it
3 is found --

4 A. No, sir, absolutely not.

5 Q. Doctor, I'm not going to get in a quarrel with you
6 on that and--

7 A. I know something about it.

8 Q. Doctor, I know you know something about it, because
9 it's in a lot of articles and been written a lot of places,
10 but I want to direct your attention to this. I don't want to
11 go down another path, sir. The TCDD you're talking about
12 here and whether it's in TCP or where it is, these are the
13 things that you say are the clinical and laboratory findings
14 through TCDD, correct, sir?

15 A. Yes, those which have been reported, sir. I'm
16 listing those which have been reported.

17 Q. Doctor, you're listing those that you believe to be
18 significant and valuable and worthwhile for these people to
19 consider, isn't that correct, sir?

20 A. Those that have been reported I have listed, sir,
21 yes.

22 Q. Could you answer my question, Doctor?

23 A. Yes.

24 Q. And, Doctor, you listed these because you think

1 they are the clinical and laboratory findings that result
2 from TCDD exposure to -- in human beings, isn't that correct,
3 sir?

4 A. No, sir.

5 Q. Doctor, don't you make that as a judgment, isn't
6 that what you said, sir?

7 A. No, I simply am reporting that which has been found
8 and that is the nature of this chart, sir.

9 Q. Oh, Doctor, a lot more than this has been found.
10 Lot more than these problems have been found, sir, from
11 exposure to humans to TCDD.

12 A. Not that I would regard as being worth considering.

13 Q. That's my point, sir.

14 A. Okay.

15 Q. You are reporting, you are evaluating what you
16 consider to be significant from exposure to TCDD, isn't that
17 correct, sir?

18 A. Only worth considering, sir, yes.

19 Q. Isn't that correct, sir?

20 A. Correct.

21 Q. And these findings are as we've discussed before
22 the neuromuscular symptoms and the irritability, the
23 peripheral neuritis and the uroporphyrinuria, isn't that
24 correct, sir?

1 A. The uroporphyrinuria--

2 Q. Doctor, would you answer my question please, sir.

3 A. No, sir.

4 Q. You did not find as a laboratory finding that
5 uroporphyrinuria was something you considered a significant
6 result of exposure to TCDD?

7 A. No, sir.

8 Q. Doctor, didn't you report it here as a laboratory
9 finding of exposure to TCDD?

10 A. Yes, in two instances it was so.

11 Q. And, Doctor, that's what you reported, isn't that
12 correct, sir?

13 A. That's why we reported it, sir.

14 Q. Excuse me, Doctor. Let me finish my question.

15 A. I thought you had finished it.

16 Q. That's what you reported that you considered
17 significant insofar as that particular laboratory finding is
18 concerned, is it not, sir?

19 A. It's listed as occasional, sir.

20 MR. CARR: Your Honor, would you ask the -- would
21 you direct the witness to answer my question.

22 THE COURT: Doctor, that was not responsive to the
23 question. Please answer the question as it was asked.

24 A. Yes, we did.

1 Q. Thank you, Doctor. Now, Doctor, with respect to
2 these various problems that we've gone through, we've
3 demonstrated what you have found as far as these health
4 effects in these workers in Nitro, we've demonstrated that 27
5 out of 29 of these people continued to have these, one or
6 more of these complaints contrary to the statements that you
7 have made that it was just in a few cases or in a very few
8 cases, and, Doctor, you have earlier told us that you
9 expected the world to rely upon the things that you have said
10 in your publications, isn't that correct, sir?

11 A. Absolutely, sir.

12 Q. And, Doctor, you told the world that these problems
13 had gone away except in a few cases, isn't that right, sir?

14 A. Yes, sir.

15 Q. And you wanted the world to rely upon the
16 statements that you made, correct, sir?

17 A. I made those statements, sir.

18 Q. My question is, Doctor, you wanted the world to
19 rely upon those statements, didn't you, sir?

20 A. I don't consider the world when I make a statement,
21 sir. I make them for the scientific community, not the world.

22 Q. Doctor, when you testified in this case on February
23 19th, 1986 were you testifying to the truth then?

24 A. Sure.

1 Q. And, Doctor, if you said then that you're telling
2 the world that, and if you -- and you want the world to rely
3 upon that, that's the truth then, isn't it, sir?

4 MR. HEINEMAN: May I have a citation, Mr. Carr?

5 A. It's a matter of semantics, sir.

6 MR. CARR: Page 91 of the transcript of February
7 19th, 1986.

8 Q. Doctor, if you said it then, it was the truth,
9 wasn't it, sir?

10 A. It was indeed, the scientific world, sir.

11 Q. Doctor, I asked you two questions in that respect.
12 The second question was, and you want the world to rely upon
13 that, don't you, sir, and your answer was, if they are
14 reported accurately, they should rely on it. Wasn't that
15 your answer then, sir?

16 A. It was, the scientific world, sir.

17 Q. Doctor, the scientific world is perfectly all right
18 with me, but the rest of the world relies upon what the
19 scientists say, don't they, sir?

20 A. I hope so.

21 Q. So, therefore, the world in effect does rely upon
22 what you and other scientists say about dioxin, don't they,
23 sir?

24 A. I hope so.

1 Q. You expect the world then to rely upon what you
2 say, don't you, sir?

3 A. Indeed I do.

4 Q. All right. So it's not the scientific world, but
5 it is the world you expect to rely upon what you say, don't
6 you, sir?

7 A. Initially the scientific world.

8 Q. I don't care whether it's initially or
9 subsequently, Doctor. You do expect the world to rely upon
10 what you say, don't you, sir?

11 A. I repeat, the scientific world, sir. That's what I
12 -- that's what I relate to.

13 Q. My question goes to the entire world, Doctor. You
14 do expect the entire world to rely upon what you say, don't
15 you, sir?

16 A. I hope so.

17 Q. Is that a yes, sir?

18 A. It is indeed.

19 Q. Doctor, in point of fact you know that the AMA, for
20 instance, you're a member of that committee, aren't you, sir,
21 you were a member of the committee that made the report in
22 1981 and then made a report in 1984, weren't you, sir?

23 A. Yes, sir.

24 Q. You told the committee the same thing that you

1 reported in these three exhibits we've discussed, haven't
2 you, sir, about in only a few cases did the aches and pains
3 remain out of the 36, didn't you, sir?

4 A. I didn't tell the committee. The committee
5 depended upon the literature, sir.

6 Q. Doctor, the literature was your reports that only
7 in a few cases did they have these continued complaints,
8 isn't that correct, sir?

9 A. If you will show me --

10 Q. In only a very few cases.

11 A. If you will show me where it is said, I will be
12 happy to look at it.

13 Q. Doctor, we have gone through the exhibits. There
14 are three exhibits?

15 A. We have not gone through this report, sir, not to
16 my knowledge.

17 Q. Doctor, would you listen to my question please,
18 sir. Would you do that, sir?

19 A. I'm listening, sir.

20 Q. Would you listen to my question, sir?

21 A. I'm listening, sir.

22 Q. Didn't you report to the world in three different
23 publications, in three different instances that in your 36
24 workers all these problems went away except the chloracne and

1 except for in a very few workers these other complaints went
2 away? Didn't you say that, sir, in Plaintiffs' Exhibit 1728
3 and in Plaintiffs' Exhibit 1727 and in Plaintiffs' Exhibit
4 1730?

5 A. That isn't how it reads in the report, sir.

6 Q. Doctor, are you listening to my question?

7 A. I am indeed, and you have referred to a report.

8 Q. My question, Doctor --

9 A. And I'd like to quote the report.

10 Q. My question refers to 1728, 1727 and 1730. Are you
11 with me on that, sir?

12 A. I sure am.

13 Q. And we have the Exhibit 17 -- I think it's 1751 is
14 an excerpt of those three reports, this excerpt, is it not,
15 sir?

16 A. Yes, sir.

17 Q. And in those three reports you say, do you not,
18 sir, 36 persons were followed over a period of four years.
19 In very few cases workers continued to complain of mild
20 pains, nervousness, and fatigue, you say that, don't you,
21 sir?

22 A. I did.

23 Q. And, Doctor, you said that in Exhibit 1728, didn't
24 you, sir? If you have Plaintiffs' Exhibit 1751, you can