

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION

BARBARA S. CARTER, ET AL	C.A. No. 88-0172-R
VS.	C.A. No. 88-0505-R
SHELL OIL COMPANY, ET AL	C.A. No. 88-0124-R

DEPOSITION OF

RICHARD O. FAULK

Between the hours of 9 AM and 4 PM

May 16, 1991

One Shell Plaza

Houston, Texas

Jerry Kelley, Texas CSR No. 2004

Nell McCallum & Associates Inc.

2900 Smith, Suite 104

Houston, Texas 77006

(713) 523-3767

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APPEARANCES

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1 RICHARD O. FAULK,
2 being first duly sworn or affirmed, testified as
3 follows:
4

5 EXAMINATION BY

6 MR. SIMON:

7 Q Would you state your name, please?

8 A Richard Oran, O r a n, Faulk, F a u l k.

9 Q I'm going to hand you a document marked
10 Deposition Exhibit 1.

11 [Exhibit 1 marked]

12 MR. MOORE: Is this the 30(b)(6) notice?

13 MR. SIMON: Yes.

14 Q Would you identify that, please?

15 A It appears to be a notice of deposition,
16 issued under Rule 30(b)(6), to Shell Oil Company
17 corporate representative.

18 Q When is the first time you saw that?

19 A Yesterday.

20 Q Who showed it to you?

21 A Counsel for Shell.

22 Q Could you --

23 A Mr. Moore.

24 Q Mr. Moore?

25 And where are you currently employed?

1 A I'm with Akin, Gump, Strauss, Hauer & Feld
2 in Houston.

3 Q Are you an employee, a partner? What's
4 your status?

5 A I'm of counsel, an employee.

6 Q And you have you made an appearance in this
7 Carter case at all?

8 A No.

9 Q Spoken to any of the lawyers in the Carter
10 case?

11 A Only regarding this episode here.

12 Q When is the first time you spoke to any of
13 the lawyers in the Carter case?

14 A Do you mean about the Carter case?

15 Q No. Anytime. The first time you ever
16 spoke to any of the lawyers in the Carter case.

17 A I suppose --

18 MR. MOORE: Well, why don't you identify
19 the lawyers in the Carter case?

20 MR. SIMON: Okay.

21 Q When is the first time you spoke to Jeff
22 Sherwood?

23 MR. MOORE: About anything?

24 MR. SIMON: That's correct.

25 MR. MOORE: Okay.

1 A Sometime last year, I believe.

2 MR. SIMON:

3 Q What did you speak to him about?

4 A Employment.

5 Q Employment where?

6 A At Akin Gump.

7 Q Were you seeking a job?

8 A At the time, yeah.

9 Q And was he interviewing you?

10 A Yeah.

11 Q At the time of that interview, did he
12 mention to you that he was representing Shell in
13 these cases?

14 A I don't recall.

15 Q Did he mention to you that he was
16 representing Shell in cases in which benzene
17 was alleged to have caused leukemia?

18 A I don't recall that these set of cases were
19 discussed during my interviews there with specific
20 attorneys. I didn't know which specific attorneys
21 were working on the file.

22 Q I'm going to ask you the question again.
23 Did he discuss with you -- did Mr. Sherwood discuss
24 with you the fact that he was representing Shell in
25 cases in which benzene was alleged to have caused

1 leukemia?

2 A I don't recall specifically discussing that
3 with Mr. Sherwood during my interview, no.

4 Q Did you discuss it with him any other time
5 prior to the past week?

6 A Yeah.

7 Q When was that?

8 A I can't give you specifics. On a couple of
9 occasions talking about the fact that there was some
10 discovery dispute in the case.

11 Q When is the first time you remember
12 discussing with Mr. Sherwood anything about these
13 cases?

14 A With -- specifically with Mr. Sherwood, the
15 fact that he was working on cases for Shell which
16 involved benzene leukemia, probably sometime before
17 I came to work at Akin Gump. But I don't know
18 exactly when.

19 Q Was it in the course of your interview that
20 you discussed it with Mr. Sherwood?

21 A I don't know if it was in interview.
22 We had numerous conversations prior to the time
23 I started to work there.

24 Q How many conversations did you have with
25 Mr. Sherwood before you went to work there, sir?

1 A Four or five.

2 Q Where did those take place?

3 A Houston, Washington and telephone.

4 Q And what did you discuss with him about
5 the benzene leukemia cases during those four or
6 five conversations?

7 A Just the fact that they were representing
8 Shell in benzene cases.

9 Q What else was discussed?

10 A Nothing.

11 Q No more than the fact?

12 A No, no more.

13 Q You didn't ask where the cases were filed?

14 A I knew where the cases were filed already.

15 Q How did you --

16 A From Mr. Hobson.

17 Q You knew from Mr. Hobson? How did you know
18 from Mr. Hobson?

19 A I had had conversations with Mr. Hobson,
20 when I was in Beaumont, regarding these cases.

21 Q In what context? What were you doing in
22 Beaumont?

23 A I was practicing law there.

24 Q Where were you practicing law there?

25 A With Strong, Pipkin, Nelson & Bissell.

1 Q Did they represent the defendants in these
2 cases?

3 A Not in these cases.

4 Q In what context did Mr. Hobson -- what did
5 Mr. Hobson tell you about these cases when you were
6 at Strong? Excuse me for not getting the rest of
7 the names right, sir.

8 A That the cases probably could be settled
9 for a lot less than what you were asking for them.

10 Q How did this conversation come about?

11 A I knew about these cases from basically
12 being back over at Shell and doing some other work,
13 and it just happened to come up. I heard that he
14 was involved in some of these cases, I heard that
15 there were some motions for summary judgment pending
16 in the cases, and we talked about that at the
17 courthouse one day after a hearing.

18 Q I believe you said you knew about them from
19 being over here at Shell. Could you elaborate on
20 that for me?

21 A I did some legal work for Shell while I was
22 at Strong Pipkin, and occasionally that required me
23 to be here, and I saw people that I had worked with
24 in the past, found out a little bit about what cases
25 might be pending against the company in general

1 conversation.

2 Q Tell me more about that. What did you
3 find --

4 MR. MOORE: Well, now, tell me -- I've
5 allowed you to proceed with what conversations he
6 had with Sherwood because I assumed you wanted to
7 try to show some bias or some prejudice, but on this
8 line of questioning that you are going into right
9 now, what has that got to do with anything?

10 MR. SIMON: The subject matter, as we all
11 know, is misconduct.

12 MR. MOORE: I understand. But you are now
13 talking about things that involve his duties as a
14 lawyer while with Shell that have nothing to do with
15 this case that I know of. That's why I'm just
16 asking you. If you show me some -- some relevancy
17 to anything, then we can deal with it.

18 MR. SIMON: Let me explain where we're
19 going.

20 MR. MOORE: Okay.

21 MR. SIMON: One of the questions is Shell's
22 misconduct as a defendant in this case. The other
23 questions that are both different and included in
24 that are the misconduct of Mr. Faulk both as a Shell
25 employee, as an Akin Gump employee and as an

1 attorney --

2 MR. MOORE: Excuse me. There's no
3 suggestion of misconduct by him as an Akin Gump
4 employee.

5 MR. SIMON: I certainly just said it. I
6 more than suggested that.

7 MR. MOORE: That's not one of the areas of
8 inquiry that the judge has allowed you to go into.
9 The judge has allowed you, as I understand it, to go
10 into these -- these boxes or these documents that
11 Mr. Faulk supposedly segregated, the reasons for it,
12 what they are, how they happened to be put there, as
13 well as the public statements made by Mr. Faulk at a
14 meeting when some materials were distributed that
15 you showed to Judge Kiser when we were in Danville.
16 Now, other than those issues, I don't know that
17 there's anything else that's open to discovery.

18 MR. SIMON: Well, the thing that is open to
19 discovery, sir, is in the judge's order.

20 Let's mark it No. 2, please.

21 [Exhibit 2 marked]

22 MR. SIMON:

23 Q Exhibit 2 I will read to you, Judge Kiser's
24 order, dated the 25th of April, 1991, Page 2: "I
25 find the plaintiffs have a right to discover the

1 extent and purpose of the document segregation."

2 And as we discussed with Judge Kiser in the --

3 MR. MOORE: All right. Now you tell me
4 where anything says Mr. Faulk's conduct -- that
5 anything suggests that he has done anything wrong.

6 MR. SIMON: This is what we're here to find
7 out, sir.

8 MR. MOORE: Show me one word in there that
9 says that Mr. Faulk's conduct is subject to any
10 question.

11 MR. SIMON: Sir, that's exactly what we're
12 here to find out.

13 MR. MOORE: There's nothing in that order
14 that says that it's subject to question or that you
15 may inquire into it.

16 MR. SIMON: If there wasn't something
17 questionable, we wouldn't be here. Discovery has
18 been closed for many months.

19 MR. MOORE: That's a matter open to serious
20 debate, as to what we're here for and why we're
21 here. If you will ask questions that deal with the
22 subject matter, then that's -- I'm not going to --
23 you're not going to hear any objection from me.
24 But if we're just going to go into issues of what
25 he does at Akin Gump, that has nothing to do with

1 any of this, and I'm going to object.

2 And to the extent -- I mean, he's here as a
3 30(b)(6) witness, meaning he is going to speak for
4 Shell about -- and the reason he has been put up here
5 is because he's the person who put these documents
6 away. He's the only person who can answer. There's
7 nobody at Shell who can answer with respect to
8 that. Now, why don't you inquire into those
9 things? That's what we're here for.

10 MR. SIMON: We'll also inquire into those
11 when the time gets appropriate. But at this point
12 we need to know who else knew about it because the
13 inquiry is going to be --

14 MR. MOORE: You haven't even asked him
15 about those documents yet.

16 MR. SIMON: I'm going to be here for a few
17 days, sir. I'll get a chance to ask him about those
18 documents, believe me. They're on the list.

19 MR. MOORE: And you may ask him who else
20 knew about them. But that's not what you're asking
21 him right now, Mr. Simon.

22 MR. SIMON: I'm certainly asking the
23 predicate. I asked him about all his conversations
24 with Mr. Sherwood --

25 MR. MOORE: And I didn't object to that.

1 MR. SIMON: Mr. Moore --

2 MR. MOORE: Now you are asking him what he
3 did as a lawyer in Beaumont, Texas.

4 MR. SIMON: Well, let me be clear about
5 this. The misconduct of Mr. Faulk is not the only
6 reason I'm here. The misconduct of Mr. Sherwood,
7 everybody in Akin Gump, Mr. Collins, we're going to
8 find out who knew about these documents --

9 MR. MOORE: Please go forward and ask your
10 questions, but be advised that if you ask questions
11 that are outside the scope I will make an
12 appropriate objection and, where proper, direct the
13 witness not to answer. That's the only way we can
14 do it.

15 MR. SIMON: Since we're dealing with issues
16 of credibility and Mr. Faulk has been proffered as
17 the 30(b)(6) witness, and since we noticed --

18 MR. MOORE: Who said we're dealing with
19 issues of credibility?

20 MR. SIMON: I just did. Those were my very
21 words. Do you want the court reporter to read it
22 back?

23 Why don't you read back what my words were,
24 sir.

25 MR. MOORE: No. Just because you said you

1 were going to deal with it doesn't mean that's a
2 proper subject matter for this deposition. You
3 would like to deal with a lot of things. You wanted
4 the judge to reopen discovery, and he wouldn't do
5 that either.

6 MR. SIMON: Okay. Let's mark No. 3.
7 Protective order motion was filed by the
8 defendants. Mark that No. 3. I'll get it here in
9 just a second. Shell's motion for protective
10 order.

11 [Exhibit 3 marked]

12 MR. SIMON: Let the record reflect that
13 there was an oral argument on this motion Tuesday
14 of this week, and the judge granted, after lengthy
15 discussion, protective order with regard to the
16 following three subjects:

17 He said that we could not inquire into
18 subjects other than benzene.

19 He said that we could not inquire as to
20 Mr. Faulk's document in terms of who at Shell had
21 authority and gave authority to publish that
22 document.

23 And he finally gave a protective order with
24 regard to at the meeting that Mr. Faulk attended on
25 some date at which this paper was presented,

1 conversations at that time, and at that time only,
2 between lawyers but not in front of other people.

3 That protective order raised any number
4 of points which you are now raising which were
5 specifically denied by Judge Kiser only this week.

6 MR. MOORE: Mr. Simon, I don't think that
7 anything that I raise has anything to do with
8 anything in the matters set forth in the protective
9 order. Obviously we disagree. We can argue all day
10 long, but go ahead and ask whatever questions you
11 wish to ask and we'll proceed as orderly as we can.

12 MR. SIMON: Why don't we just, before we
13 proceed, since we haven't yet got to whether he is
14 here as a 30(b)(6) witness, if he is going to be
15 one, I'd make the request that Mr. Collins leave,
16 since he's going to be deposed this afternoon on
17 factual matters that may involve a conflict in
18 factual testimony and he'll be a factual witness
19 in this case, as will Mr. Faulk. I think it's
20 appropriate at this point that Mr. Collins leave,
21 not listen to the testimony of the other fact
22 witness. And I'm going to leave for a second so
23 you can consider that.

24 MR. COLLINS: We already have. I'm here
25 as the designated company representative for these

1 depositions this week. As you well know, I am the --

2 MR. MOORE: Okay.

3 He's here as a company-designated
4 representative, and the company is entitled
5 to have a representative here.

6 MR. SIMON: I'm going to state for the
7 record that I am formally requesting, despite
8 whatever considerations you've made, that because
9 you are going to be a fact witness in this case,
10 as Mr. Faulk is, that you leave the deposition,
11 allow us to have separate inquiries. Mr. Hobson
12 and I will leave the room for a minute and allow
13 you to reconsider that.

14 MR. MOORE: There's no need for you to
15 leave the room, because he is not going to leave.
16 He is here as the company's designated
17 representative. If you are saying we can't have
18 but one representative, then Mr. Collins is going
19 to be that representative.

20 MR. SIMON: No, we're asking that
21 Mr. Collins leave, since he's a fact witness.

22 MR. MOORE: And we're denying your request.

23 MR. SIMON: We'll leave and give you a
24 chance to --

25 MR. MOORE: You don't need to leave.

1 MR. SIMON: We'll do it anyway.

2 [Recess]

3 MR. SIMON: Back on the record.

4 Q Now, would you tell me about your
5 conversations with Mr. Sherwood regarding this case?

6 A I think I've described -- I mean, what do
7 you want to know about it?

8 Q I want to know the date of the first
9 conversation.

10 MR. MOORE: I object. It's been asked and
11 answered. But if --

12 A I don't remember the date.

13 MR. SIMON:

14 Q Well, what do you remember about the first
15 conversation?

16 MR. MOORE: Didn't he say it was related to
17 employment? Hasn't he already said that, Ron?

18 MR. SIMON: I think he did, Rob. But then
19 I think he remembered a little more --

20 MR. MOORE: Okay.

21 MR. SIMON: I just want to get his complete
22 memory. I'm really not trying to badger him.

23 A As I recall, the conversation addressed the
24 existence of the case.

25 MR. SIMON: Okay.

1 Q What else did you ever come to learn about
2 it?

3 A Nothing. I mean, not -- I don't know
4 exactly what you mean. I've come to learn a lot
5 up till today, you know, with all this stuff that's
6 going on here.

7 Q Could we, for the purposes of just
8 understanding each other and clarifying our
9 communication, when we talk about "this stuff" we're
10 talking about the discovery dispute. Is that fair?

11 A No.

12 Q No?

13 A No. Let's just talk.

14 Q Okay. Fair enough.

15 Then, other than in your seeking employment
16 and learning the case existed, what's the next thing
17 you learned from Mr. Sherwood about it?

18 MR. MOORE: "About it" meaning the case?

19 MR. SIMON: The case, yes.

20 A As I recall, that there was some dispute
21 regarding discovery.

22 MR. SIMON:

23 Q When did you learn that?

24 A I don't know. In the last month or so, I
25 guess.

1 Q And prior to the last month you didn't know
2 anything about the case?

3 A Not from Mr. Sherwood.

4 Q Well, tell me everything that you knew
5 about the case prior to your conversation with
6 Mr. Sherwood last month.

7 MR. MOORE: Excluding what he has already
8 told you about Mr. Hobson and all of that?

9 MR. SIMON: Right.

10 Q Don't repeat what you said -- did Mr. Hobson
11 tell you anything else about it at that time other
12 than what you mentioned?

13 A I believe he told me it wasn't a pure
14 benzene case, that it was a rubber solvent case.

15 Q Anything else Mr. Hobson told you?

16 A Not specifically. I remember a discussion
17 at the courthouse regarding the motions for summary
18 judgment and perhaps some settlement parameters that
19 might be appropriate.

20 Q What do you remember about those?

21 A I've already told you.

22 Q Now tell me, other than during your job
23 interviews with Mr. Sherwood, your learning of the
24 existence of the case and your conversations at
25 the courthouse with Mr. Hobson that you have just

1 described to me, what else did you know about this
2 case prior to your discussions with Sherwood
3 approximately a month ago?

4 A I knew that Akin Gump was representing
5 Shell and others in this case.

6 Q How did you know that?

7 A Just from some conversations when I was at
8 Shell working on other cases.

9 Q So when you mention these conversations,
10 let me see if I've got the time frame right. This
11 is when you were -- after you had left Shell's
12 employment --

13 A That's right.

14 Q -- but before you had entered Akin Gump's
15 employment?

16 A That's right.

17 Q You were over here at this One Shell Plaza
18 and in your conversations you learned that Akin Gump
19 had these cases?

20 A Yeah.

21 Q What did you learn about it?

22 A That's about all I learned.

23 Q When did you leave Shell's employment?

24 A February 28th was my last day in the
25 office. That's 1990. I remained on the payroll --

1 maybe I didn't. I think that was my last day,
2 because they paid me for my vacation days after
3 that.

4 Q When did you begin at Strong Pipkin?

5 A March 12th, I think, 1990.

6 Q When did you leave there?

7 A Mid-November 1990.

8 Q When did you start at Akin Gump?

9 A Whatever the week before Thanksgiving was,
10 the Monday before Thanksgiving, 1990.

11 Q And in that time between your starting at
12 Akin Gump and your finding out about the discovery
13 disputes about a month ago from Sherwood, did you
14 have any conversations about these cases with
15 anybody at Akin Gump?

16 A The fact that the cases existed may have
17 also come up in some conversations with Cliff Zatz.

18 Q What did you discuss with Mr. Zatz?

19 A It was essentially the existence of the
20 case and that they were representing Shell.

21 Q How often did you see Mr. Zatz during the
22 period between November and getting involved in
23 these discovery disputes about a month ago?

24 A Once, twice maybe.

25 Q Where did you see him?

1 A Once in Washington and once here.

2 Q Did you discuss anything about these cases
3 during that time?

4 A No.

5 Q Did Zatz ask you how to get more Shell
6 business for Akin Gump?

7 A I don't recall whether Cliff asked me
8 that. It was certainly something that Akin Gump
9 wanted to do.

10 Q Who do you remember at Akin Gump asking you
11 that?

12 A Asking me what?

13 Q How to get more Shell business for Akin
14 Gump.

15 A I don't think anybody ever asked me that
16 specific question.

17 Q Well, you sort of smiled. I don't want to
18 characterize your facial expressions, but, I mean,
19 how did you know this was something that Akin Gump
20 was interested in?

21 MR. MOORE: Because --

22 MR. COLLINS: Is this relevant?

23 MR. MOORE: No, it's not relevant.

24 A Every law firm is interested in expanding
25 its client base, including you, I presume.

1 MR. SIMON:

2 Q What did you know about Akin Gump's desire
3 to represent Shell in toxic tort cases?

4 MR. MOORE: Mr. Simon, you know, you are
5 getting into areas that I don't understand the
6 purpose for, unless you are trying to embarrass the
7 witness or just discuss things that are of personal
8 interest to you. We know Akin Gump is counsel to
9 Shell in these cases. I mean, we know that any law
10 firm is interested in representing Shell.

11 MR. SIMON: Go ahead. You can answer the
12 question.

13 A What was the question?

14 MR. SIMON:

15 Q The question was: How did you know that
16 Akin Gump wanted to represent Shell?

17 MR. MOORE: He's already answered that
18 question.

19 MR. SIMON:

20 Q Did you know anything specific about Akin
21 Gump's desire to represent Shell in toxic tort cases
22 other than the general desire of every lawyer to
23 have more clients?

24 A No.

25 Q During your interviews with Akin Gump,

1 did they ask you about your ability to get Shell
2 business for Akin Gump?

3 A It was discussed.

4 Q What did you tell them?

5 A I told them I didn't think I could help
6 them.

7 Q Did you tell them that you had expertise in
8 the defense of benzene leukemia cases?

9 A I think they knew that. I don't think I
10 told them that specifically.

11 Q How did they know that?

12 A I don't know.

13 Q What comments did anyone at Akin Gump
14 make to lead you to believe that they knew you
15 had expertise in benzene leukemia cases?

16 A I suppose in the overall employment process
17 that my particular experience was discussed. I
18 can't give you any specific conversations or events
19 where that was discussed.

20 Q What experience did you tell them about in
21 benzene leukemia cases?

22 MR. MOORE: Excuse me, Mr. Faulk. I
23 suggest to you that what you told them was your
24 experience in benzene cases has nothing to do with
25 any issue in this case.

1 You may ask him what his experience was,
2 but what he said to Akin Gump on that score isn't
3 relevant to -- isn't even conceivably relevant to
4 any issue.

5 MR. SIMON: It's just so relevant --

6 MR. MOORE: I mean, there's no claim that
7 Akin Gump is guilty of any misconduct in this case.

8 MR. SIMON: The fact is, sir, that the
9 materials that were known to exist weren't
10 produced. We're here to find out why they weren't
11 produced and --

12 MR. MOORE: And you will find that out
13 as soon as you ask Mr. Collins and the people who
14 know. This man doesn't know why they weren't
15 produced. He wasn't even here.

16 MR. SIMON: We'll find out whether he
17 knows.

18 MR. MOORE: Then ask him those questions.
19 We'll answer every question you ask on that score.

20 MR. SIMON:

21 Q What experience did you tell Akin Gump you
22 had in benzene leukemia cases?

23 MR. MOORE: I suggest again, Mr. Faulk,
24 what you said to Akin Gump was your experience has
25 nothing to do with any issue in this case. If he

1 wants to ask you whether you talked to him about any
2 documents, any suggestion that documents be hidden
3 or destroyed or something of that sort, I guess
4 that's fair inquiry. But what you said to them
5 trying to get employment is not in issue in this
6 case at all, and as an individual person you decide
7 yourself whether or not you want to answer it. It's
8 not germane or relevant.

9 A I don't recall any specific conversations.

10 MR. SIMON:

11 Q What was your experience with benzene
12 leukemia cases? All the experience. Why don't
13 you start from the beginning and tell us all the
14 experience you have had with benzene leukemia
15 cases.

16 A Okay.

17 MR. MOORE: You can summarize.

18 A I'll do my best.

19 I was a member of the Shell Litigation
20 Division and was charged with defending cases on
21 a lead counsel basis that were assigned to me.
22 And from time to time I was assigned the task
23 of defending allegations against the company of
24 injuries or deaths associated with benzene exposure.

25 MR. SIMON:

1 Q Tell me about the cases that you worked on.
2 Rob, do you want me to stop while --

3 MR. MOORE: I'm sorry. I thought maybe you
4 wanted some coffee. We've got some in here now.

5 THE WITNESS: Yeah. I'd like some.

6 [Discussion off the record]

7 A Let me finish my last answer before I
8 answer your other question. Also from time to time
9 I was assigned the responsibility of organizing
10 joint defenses to cases in which Shell was named as
11 a party, multiple-defendant cases. And once those
12 cases were organized, they would be transferred to
13 another attorney to manage.

14 MR. SIMON:

15 Q Why don't you tell me about the cases that
16 you worked on, benzene leukemia cases, while you
17 were here.

18 A I can't recall all the specific names
19 associated with them. I can give you some examples
20 if you like. I can't tell you everything.

21 Q I don't want you to give me examples. What
22 I want you to do is tell me what you do remember.
23 I'll break it down case by case. What's the first
24 case you remember, where was it, who was the
25 plaintiff --

1 MR. MOORE: Let me suggest this. I think
2 you may ask him about any cases that were filed as
3 a matter of public record and those kinds of things,
4 but references to cases that weren't filed or with
5 reference to particular advice that the witness may
6 have given to Shell, we will assert an attorney-
7 client privilege with respect to those matters. But
8 go ahead and ask specific questions, and if we have
9 a specific objection or want to assert a specific
10 privilege, that will be done in response
11 to your question.

12 MR. SIMON: I think that's appropriate.
13 Certainly one thing I do not want to ask you about
14 is if there was a case that was never filed and you
15 gave legal advice about that case. I don't want to
16 know about it. I'm not trying to impinge upon that
17 area.

18 Q Which cases do you remember?

19 A The first case I remember is a case called
20 Poston.

21 Q Could you spell it for me, sir?

22 A P o s t o n, I believe. I believe the
23 plaintiff's first name was Sidney.

24 Q What was the nature of the exposure there?

25 A The allegation was that he was a dockworker

1 for -- on -- a pumper gauger, as I recall, for
2 Monsanto who was exposed to benzene in the course
3 of loading and unloading barges. And allegedly as
4 a result of that he developed multiple myeloma.

5 Q Do you know where that case was filed?

6 A It was in Harris County.

7 Q What was your role in that case?

8 A I was for -- I can't recall whether it was
9 a year, it may have been less than a year, lead
10 counsel for Shell on the case.

11 Q Was there outhouse counsel? I'm sorry.
12 What should I call it? What do you call counsel
13 like Mr. Moore, who is not --

14 MR. COLLINS: Outside counsel.

15 MR. SIMON: Outside counsel? Thank you,
16 Ray.

17 A Not at that time. There were codefendants,
18 of course, in the case. The case ultimately became
19 a joint defense sometime a year or so into the
20 case. And at that time it was transferred away,
21 outside counsel was retained and I had nothing
22 further to do with the case.

23 MR. SIMON:

24 Q The phrase you used earlier and now again
25 the phrase "lead counsel," do you use the phrase

1 "lead counsel" only in instances where there is no
2 outside counsel?

3 A No. No. I mean it's the question of who
4 is, for lack of a better word, first-chair counsel
5 in the case, or the person responsible for appearing
6 in court primarily for the company.

7 Q So let's just take for a hypothetical, so I
8 understand your use of the word, let's take the case
9 in front of us, the Carter case, in which there's
10 Akin Gump and Mr. Moore's firm, both outside
11 counsel. Does Shell have lead counsel in that case?

12 A I have no idea. I'd have to ask them. I
13 don't know what his role is. I haven't discussed it
14 with him. I don't know what -- how he relates to the
15 Akin Gump people. Maybe we could use a better
16 example.

17 Q Let's take this case, if you'll allow me to
18 just change it to a hypothetical. If there were a
19 case where there were outside counsel, would Shell --
20 and I don't know how to -- let me give you a set of
21 questions. Would there necessarily be a lead
22 counsel, would there never be a lead counsel
23 in-house, or might there or might there not be
24 lead counsel in-house?

25 MR. MOORE: Mr. Simon, why don't you ask

1 him about the relationship with Mr. Tyler? That may
2 give you an example of what lead counsel is and how
3 he worked with outside counsel. Because you are
4 going to talk with Mr. Tyler tomorrow. You can ask
5 him about all that.

6 MR. SIMON:

7 Q Within the meaning of that, maybe
8 Mr. Moore's hypotheticals, but I'm trying to
9 understand whether "lead counsel" applies to
10 cases where you have outside counsel. And
11 maybe you can give me --

12 A It does at times.

13 Q It does at times?

14 A Sure.

15 Q Is there a case where there isn't a lead
16 counsel even in-house?

17 A Sure. When outside counsel is lead
18 counsel.

19 Q So -- so there's only one lead counsel in a
20 case? Is that what you are saying?

21 A As I use that term, that's true.

22 Q And "lead counsel" means the attorney who
23 makes the majority of the appearances in court?

24 A I think that's the way I'm using it.

25 Q That's what I want to know, how you are

1 using it. That's all I wanted to know. And what
2 was the result of the Poston case? Do you know?

3 A I understand it was settled.

4 Q Do you know what work you did in it?

5 A [Moving head up and down]

6 Q What kind of work did you do?

7 A I took the plaintiff's deposition, filed
8 some motions, written discovery, and responded to
9 a document production.

10 Q What was the process by which you responded
11 to the document production? By that I mean you got
12 it from the plaintiff. How did you conduct it?

13 A It was rather typical. We had certain
14 objections, as I recall, that we resolved with the
15 plaintiff's counsel by agreement. I think, but I'm
16 not sure, that one of the objections may have been
17 judicially resolved.

18 Once the parameters of the document
19 production were decided by agreement and by court
20 ruling, the documents were produced. Searched for,
21 identified and produced.

22 Q Is it your testimony, then -- let me see if
23 I've got the order right -- that first you do the
24 objections and resolve the parameters before you
25 conduct the search?

1 A That's certainly, I think, the most
2 appropriate way if you have objections.

3 Q Maybe you can explain to me how you make
4 objections before you look for the documents.

5 A I can't explain that to you.

6 Q But you are saying it's your practice to
7 make the objections first, before you conduct the
8 search?

9 MR. MOORE: He said if he has objections.

10 MR. SIMON: I think he said it was the
11 standard practice to make the objections, but --

12 MR. MOORE: I think his answer -- the court
13 reporter can always read it back. I think he said
14 if he had objections he made them. But go ahead.

15 A Well --

16 MR. SIMON:

17 Q Is it your practice to make the objections
18 before you do the search?

19 A If there are objections that I'm aware of
20 that can be made at that time, sure.

21 Q And you make them before you make the
22 search?

23 A Before you actually go and search the
24 files, yes.

25 Q Right.

1 And in the Poston case, which you've
2 identified as the first benzene case you handled --

3 A That I remember.

4 Q That you remember handling, thank you.

5 Did you have any prior knowledge at that point as to
6 what might be in the -- what was in the Shell files
7 about the dangers of leukemia?

8 A To some extent.

9 Q What extent?

10 A I had seen some of the company's safety
11 materials as the case was commenced, I had seen some
12 information, had some conversations, I'm sure, with
13 people in-house and out. So I had some idea, I'm
14 sure.

15 Q Well, prior to the case, what I had asked
16 you -- and I appreciate your answer -- was that prior
17 to this case being commenced at all, did you have
18 any knowledge of what was in the Shell files about
19 the dangers of benzene?

20 A As a general matter, sure, I had some idea,
21 but --

22 Q What I want to know is how you got it prior
23 to being involved in this case.

24 A I don't really recall specifically. I had
25 an interest in toxic tort litigation prior to that.

1 Q Are there any materials that you were given
2 in terms of a booklet or a training session?

3 A No, I don't remember anything like that.

4 Q But you knew you had some general knowledge
5 of what was in Shell's files prior to that case
6 being begun, but you don't know what it was?

7 A I had some idea of -- I guess the best
8 way to put it is the location and the types and the
9 potential volume of documents that might be involved
10 in -- in responding to any sort of toxic tort case.
11 Document production.

12 Q Now, you said you talked to some people
13 about documents. Who did you talk to?

14 A I don't remember who with respect to that
15 case.

16 Q Did you ever talk to anybody in the legal
17 department about how you would find documents about
18 Shell's knowledge about the hazards of benzene?

19 MR. MOORE: Wait. Excuse me.

20 A Sure I did.

21 MR. MOORE: Did he ever talk to anybody in
22 the legal department?

23 MR. SIMON: Right.

24 MR. MOORE: Well, you know, you are getting
25 into work product of a lawyer in the conduct of

1 litigation. And you're not entitled to get into
2 that. I mean, if you are --

3 MR. SIMON: I believe that specifically
4 that's exactly what Judge Kiser ruled, that the
5 work product does not --

6 MR. MOORE: Well, I don't think --

7 MR. SIMON: -- does not pertain.

8 MR. MOORE: -- the question of the Poston
9 case or any other case that this gentleman worked on
10 was ever discussed with Judge Kiser. Now, I suggest
11 that there should be no disagreement among us as to
12 whether or not what he discussed with other lawyers
13 at Shell in anticipation or in preparation for
14 litigation is work product.

15 MR. SIMON: Work product, privilege --

16 MR. MOORE: That's protected from
17 discovery.

18 MR. SIMON: -- is protected from discovery,
19 and there's an explicit exception when the subject
20 is the conduct or misconduct of the attorneys. And
21 that is what we are inquiring about.

22 MR. MOORE: All right. Well, I thought we
23 had resolved that, but perhaps we didn't. I didn't
24 know that this gentleman's conduct was ever at
25 issue. The only question at issue in terms of

1 conduct is whether or not Shell should have told
2 you about the documents at issue having been
3 segregated. That's the only question. And this
4 gentleman wasn't even employed by Shell when those
5 events occurred. Now, you know, again, that's --

6 MR. SIMON: I'm not going to mince words.
7 We've both stated our positions a few times. I
8 appreciate yours, and I think you've heard mine.

9 Q Let's go back to what it is that you knew
10 at the time of the Poston case about what was in
11 Shell's files about their knowledge of the hazards
12 of benzene.

13 A All I can recall is having seen some of
14 the MSDSs and that sort of stuff, and having had
15 various conversations regarding where documents were
16 and where they might be located, things like that.

17 Q When did Poston begin? Do you know?

18 A I can't give you a specific. I would say
19 it was approximately 1983.

20 Q Who did you have conversations with to find
21 out where the documents might be?

22 A I don't recall specifically who I talked
23 to.

24 Q Well, what departments were they? Did
25 you go to the legal department? Did you go to a

1 librarian? I'm trying to find out how you find
2 these things out when you have the job.

3 A Generally the conversations would be with
4 employees of the Health, Safety & Environmental
5 Department.

6 Q Is that where all the records regarding
7 Shell's knowledge of the hazards of benzene are,
8 to your knowledge?

9 A No.

10 Q Well, where else would you look besides the
11 Health, Safety & Environmental Department?

12 A Well, I mean, it could be -- documents could
13 be anywhere. I mean, I can't speculate for you.
14 There's --

15 Q Where else did you look?

16 A In Poston, I think the parameters of the
17 agreement did not require me to look any further
18 than the Health, Safety & Environmental Department.

19 Q And you reached that agreement before you
20 looked anyplace else?

21 A And perhaps --

22 Q Wait. Do you want to answer that for me?

23 A Do you want to let me finish my answer to
24 your first question?

25 Q Please.

1 A And perhaps the Marine Transportation
2 Department as well.

3 Q Now would you answer my next question? Did
4 you reach the parameters limiting your search before
5 you looked any other places?

6 A I don't remember.

7 Q You don't remember determining whether
8 there was anything any other place before you
9 reached the agreement, do you?

10 A I don't really understand your question.

11 Q Well, you could have looked and found out
12 where the information generally was and then made
13 objections and tried to reach an agreement or you
14 could have tried to draw the line before you looked
15 and saw what was there. I'm trying to understand
16 what you did.

17 A I don't recall which came first.

18 Q When you went to HS & E to look at the
19 documents, where is that specifically?

20 A In this building.

21 Q What floor?

22 A It varies. I mean, when I was doing this,
23 it was somewhere -- somewhere in the teens.

24 Q Okay. And the documents, could you
25 describe for me, were they in 10 rooms, one room,

1 one file cabinet, one drawer?

2 A Various locations.

3 Q They were in various locations. Now, what
4 about --

5 A And also -- there's also a central filing
6 area.

7 Q Now, is the central filing area --

8 A At least, there was.

9 Q There was a central filing area at that
10 time. Does that include everything that was in the
11 separate locations? Or is it in addition to the
12 separate locations?

13 A I presume -- I don't know. We certainly
14 didn't rely upon the central room completely.

15 Q So you went to the central room and you
16 went to other areas?

17 A Sure.

18 Q Give me some sense. What was the extent of
19 the files in the central room you looked at?

20 A Thousands and thousands of files.

21 Q In terms of -- could you give me an estimate
22 of linear feet or some way -- thousands and thousands
23 of files could be 2,000 pages, sir, or it could be
24 10 million pages.

25 A It's closer to 10 million than 2,000.

1 Q Closer to 10 million than 2,000. And it's
2 in one floor of this building?

3 A I have no idea whether it's on one floor or
4 whether it was on two floors. I just don't
5 remember.

6 Q Did you look at each of these documents,
7 these closer to 10 million documents?

8 A Me personally? No.

9 Q Well, did anyone under your supervision
10 look at each of them at that point?

11 A As I recall, we relied upon the persons
12 in charge of that filing system, after having been
13 briefed by us, to locate and pull responsive --
14 potentially responsive files for our review.

15 Q And what you are saying is there was a
16 person in charge of various filing systems at
17 HS & E?

18 A There was at that time. I presume there
19 still is. I don't know.

20 Q Do you know who it was at that time?

21 A At that time, I believe it was a lady by
22 the name of Suzanne Funk.

23 Q Do you know if Ms. Funk is still in that
24 position?

25 A No.

1 Q Do you know anybody else that's ever held
2 that position?

3 A No.

4 Q Do you know who holds the position today?

5 A No.

6 Q Did you go down and review the HS & E files
7 in preparation for this deposition?

8 A No.

9 Q Did you go down and review them in the past
10 month in considering the discovery questions that
11 are at issue in this case?

12 A No.

13 Q Do I understand, then, that you would --
14 you would, if you wanted to find out, go to Ms. Funk
15 or the person in her position and that person would
16 direct the search towards other people?

17 A They would assemble a team that would,
18 after having been briefed by the attorney, by me,
19 go and pull the potentially responsive files.

20 Q Are they ever shown an index of the files
21 so they would have some sense of what was there?

22 A No, not with respect to this, no.

23 Q Were you ever shown an index at any point
24 with regard to what was in the HS & E files?

25 A There may be an index. I don't recall ever

1 seeing one.

2 Q Have you ever heard one discussed?

3 A Yeah.

4 Q What do you recall about that discussion?

5 A Just that there was an index at one point
6 that existed. And that's all I recall.

7 Q But you don't remember ever seeing that
8 index?

9 A I don't remember ever seeing it, no.

10 Q Who was the person who had the index?
11 Ms. Funk?

12 A Yeah, I believe that's correct.

13 Q And your understanding was that that index
14 included the materials in the central file as well
15 as the ones that were not in the central file at
16 HS & E?

17 A I think it was only a central file index,
18 as I recall.

19 Q And your understanding is that there were
20 things in, quote, HS & E files that were not in that
21 central file index?

22 A That's my understanding.

23 Q Do you know if the central file index
24 included the files in corporate medical?

25 A I don't know.

1 Q Do you know if the central file index
2 included the materials from the toxicology
3 department?

4 A I don't know.

5 Q Do you know whether the central file index
6 included the materials that later appeared in the
7 blue vinyl notebook that's discussed in this case?

8 A Index? No, I don't know. They may have,
9 I don't know. I don't know that much about it. I
10 don't know anything about the index.

11 Q Do you know where the Soley documents of
12 1943 are in the HS & E files?

13 A No.

14 Q Did you ever know where they were kept in
15 any HS & E files?

16 A I don't remember where they were kept, no.

17 Q Do you ever know where they were kept?

18 A No.

19 Q Do you remember who found the Soley
20 documents?

21 A No.

22 Q When is the first time you ever saw them?

23 A Mid-1980s sometime they came to my
24 attention.

25 Q Do you remember how they came to your

1 attention?

2 A No.

3 Q Well, were you browsing through the files
4 to look for yourself? Or how did they come to your
5 attention?

6 A I'd like to be able to tell you that I
7 remember the precise circumstances. I just don't.

8 Q When is the first time you remember seeing
9 them?

10 A Mid-1980s sometime.

11 Q What was the context in which you remember
12 seeing them?

13 A I guess I remember seeing them in the
14 context of -- I don't really remember the exact
15 context, to tell you the truth.

16 Q What do you remember?

17 A I remember looking -- I remember seeing
18 the document. That's what I remember. And I don't
19 really recall -- I think perhaps -- well, I don't
20 want to speculate. I really don't know.

21 Q Did you see it in your office?

22 A It was in the legal department at the time.

23 Q Did you see it pursuant to a search that
24 you had directed?

25 A That's possible, but I don't know.

1 Q Did you ever see it in the HS & E files?

2 A No.

3 Q Do you know, as you sit here today, whether
4 it's in the HS & E files?

5 A Do I know for sure? Yeah.

6 Q How do you know that?

7 A I understand that it's in the study files
8 of HS & E.

9 Q What does that mean, "the study files"?

10 A It's a separate from the overall documents
11 that I just described to you. It's a separate file.

12 Q Could you just tell -- what do you mean by
13 the word "study" in this regard? How does it fit
14 into a category called study?

15 A There's a separate filing system that --
16 where studies that have been done, proprietary
17 studies and things like that that have been done
18 for the company are kept.

19 Q And that's where the -- at least one copy
20 of the Soley file is? Or to your best knowledge?

21 A Yeah.

22 Q Did you see it there?

23 A No. I've just been told that it's there.

24 Q Who told you that?

25 A I think one of my legal assistants.

1 Q Do you remember which legal assistant?

2 A No. I've had -- there were several that
3 worked on the process.

4 Q In these study files, are the Kettering
5 studies that were begun for API in the late '80s
6 in those files?

7 A I don't know.

8 Q Do you know where references to those would
9 be in Shell's files?

10 A No.

11 Q Are you familiar with those studies?

12 A Not by name.

13 Q What are you familiar with?

14 A I'm not familiar with them.

15 MR. MOORE: Do you mean what is the
16 universe of knowledge he has or --

17 MR. SIMON:

18 Q I'm referring to API retained Kettering
19 to do cancer studies of petroleum workers in the
20 late '70s. And that study, I believe, was never
21 terminated or never completed and brought to
22 fruition with a written report. Are you familiar
23 with that?

24 A Not enough to discuss it with you. I don't
25 even think I know of its existence.

1 Q You don't know of its existence?

2 A I don't think so. If you have it, I'll
3 look at it, maybe it will refresh my recollection.

4 Q What other proprietary studies are you
5 aware of in the study files in HS & E?

6 A No specific studies that I can quote to
7 you.

8 Q How large are the proprietary study files
9 in HS & E?

10 A Fairly large, as I understand.

11 Q Well, could you -- I mean, two feet, 10
12 feet, a thousand?

13 A Thousands of studies.

14 Q Thousands of studies?

15 A Now, they don't all deal with benzene, I'm
16 sure.

17 Q How many proprietary studies have to do
18 with benzene that you are aware of?

19 A I have no idea.

20 Q Do you know how large the proprietary
21 studies section of the HS & E documents are that
22 deal with benzene?

23 A Other than what I've just told you, no.

24 Q Do you know whether all of the proprietary
25 studies that deal with benzene in the HS & E files

1 have been produced in this case?

2 A I have no idea.

3 Q Have you ever seen a list of the
4 proprietary studies in the HS & E files?

5 A I don't recall ever seeing one, no.

6 Q Are you aware of a list that lists the
7 proprietary --

8 A No.

9 Q Are you aware of any list anywhere of
10 the proprietary studies that deal with benzene
11 in Shell's files?

12 A No.

13 Q You've never seen that list?

14 A No.

15 Q Never heard of that list?

16 A No.

17 Q As a person who defended Shell in numerous
18 products-liability cases, you never asked? Did you
19 ever ask whether there was a list of Shell's
20 proprietary studies dealing with benzene?

21 A A list? No.

22 Q Did you ever ask for information about all
23 Shell's proprietary studies dealing with benzene?

24 A For all? No.

25 Q Did you ever ask for information about

1 Shell's proprietary studies dealing with benzene?

2 A Yes.

3 Q What did you ask?

4 A There was a person that was in charge of
5 that similar to the position that Suzanne Funk had.
6 Procedurewise, when we had a request for that sort
7 of information, we would call that person and that
8 person would generate the studies for us that would
9 be responsive to the request, and they would be sent
10 to us.

11 Q Who was that person?

12 A First name was Barbara. I can't remember
13 her last name.

14 Q But you never saw a list of what was in
15 those studies?

16 A No.

17 Q And as a person who represented Shell on
18 numerous benzene leukemia cases, you never made an
19 inquiry to determine what was in those studies?

20 A That's not true.

21 Q What inquiry did you make?

22 A With respect to on an as-needed basis, on
23 a case-by-case basis, we made requests and we had
24 studies furnished to us.

25 Q But you never made an attempt to find out

1 generally all the studies that Shell had done on a
2 proprietary basis concerning benzene leukemia?

3 A The issue never arose.

4 Q And you never made the inquiry?

5 A I did make an inquiry with respect to
6 studies that were responsive and that had to be
7 produced. And they were furnished to me and, as
8 appropriate, they were released.

9 Q And those were after you had reached
10 an agreement with counsel about limiting their
11 discovery requests, isn't that true?

12 A Sometimes yes, sometimes no.

13 Q Can you cite me a single occasion where
14 you produced studies without posing any objections
15 and reached an agreement with counsel?

16 A I can't cite you an example specifically
17 either way.

18 Q You can't cite any example where you did
19 negotiate and limit the amount of discovery you
20 were going to produce? You can't cite an example
21 of that?

22 A If you are talking about timing, no, not
23 without having the actual files in front of me to
24 review. And I won't testify about things I have
25 to speculate about on cases that are long closed.

1 Q Did you ever undertake in any way an effort
2 to determine what was in Shell's files concerning
3 what Shell knew about the leukemia risk of benzene?

4 A In the context of cases, yes.

5 Q What did you do?

6 A Well, we would evaluate it on an as-needed
7 basis, on a case-by-case basis to determine what the
8 extent of potential production needed to be.

9 Q But you never, as I understand -- and I
10 don't want to misstate your testimony. Let me see
11 if I understand you. On a case-by-case basis when
12 you had a discovery request that you agreed to, you
13 went out and found out, responded to it. Is that
14 correct?

15 A That's true, we did that.

16 Q But you never, as I understand it, went
17 out and made a general inquiry as to what was in
18 the files without regard to specific case request?

19 A Never made a companywide search on that at
20 all. We had, of course, when we went through the
21 Poston case, collected and reviewed a number of
22 documents. And with respect to the HS & E files,
23 I had a general idea of what was there.

24 Q Did you find out things that were there
25 that you did not produce in the Poston case?

1 A Oh, sure.

2 Q Then how is it -- because I'm confused now
3 about what you did. I thought you only produced
4 things -- you only searched for things that you
5 had to produce. How is it that you found things
6 in Poston that you didn't produce?

7 A Because you search before you produce.
8 And you produce that which is responsive.

9 Q Did you ever produce the Soley document
10 in any cases when you represented Shell?

11 A No.

12 Q Did you ever disclose the existence of
13 the Soley document in any case when you represented
14 Shell?

15 A No.

16 Q Do you know of any case in which you
17 represented Shell in which the Soley document was
18 produced?

19 A No.

20 Q Do you know of any case in which the
21 existence of the Soley document was disclosed to
22 anyone outside of Shell?

23 A Do you mean other than Shell employees?

24 Q Right.

25 A Other than counsel representing Shell?

1 Q Right.

2 A No.

3 Q Do you know of anyone to whom the existence
4 of the Soley document was disclosed other than
5 yourself? Now I am considering Shell employees.
6 To whom was its existence disclosed?

7 MR. MOORE: I'm not sure -- when you say to
8 whom it was disclosed, of course, you are asking for
9 this witness's knowledge. It could have been
10 disclosed by any number of people at any number
11 of times.

12 MR. SIMON: That's exactly what I want to
13 know. To whom does he know it was disclosed?

14 A Well, I can't object to your question, but
15 I think "disclosure" was the wrong word, because it
16 was never hidden from anyone. It was accessible to
17 anyone who wanted to see it.

18 MR. SIMON:

19 Q Who knew of its existence that you knew of?

20 A That I knew of?

21 Q That's right.

22 A Presumably anyone who dealt with the place
23 where it was originally stored or kept in the HS & E
24 files and wherever else in the company it might have
25 been found.

1 Q Do you know where else it might have been
2 found?

3 A There are other places that I suspected it
4 existed.

5 Q Where is that?

6 A Perhaps in the toxicology laboratories at
7 the West Hollow Research Center. That's, I think,
8 the most logical spot where I would have thought it
9 existed. I never did confirm that it did.

10 Q And as far as you know, it always existed
11 and continues to exist in HS & E files?

12 A That's my understanding.

13 Q And is it your understanding that anybody
14 that had the authority and went down and looked for
15 it would have found it?

16 A Sure.

17 Q And if a person wanted to know what Shell --
18 let's assume that the person had I want to say free
19 run of the building. That's not very appropriate.
20 Had the authority to get at these files and they
21 wanted -- they sat here and they said, "Gee, I want
22 to know what Shell knew about -- had been told about
23 the risk of leukemia from benzene in 1943." Take me
24 through the process of how, sitting up here in the
25 legal department, they would have gotten to the

1 documents.

2 A Make a telephone call to Health, Safety &
3 Environment and tell them what you want.

4 Q And if you called Health, Safety &
5 Environment, you would talk to the general librarian
6 first? Is that how you would do it?

7 A There are any number of sources, Barbara or
8 Suzanne or perhaps the librarian.

9 Q And they could have directed you to the
10 Soley document?

11 A I'm sure they could have.

12 Q They knew of its existence?

13 A I'm sure.

14 Q And they knew of it since the mid-'80s, is
15 your belief?

16 A It was in the files.

17 Q Was it ever listed on any index or
18 reference to it?

19 A I don't know.

20 Q Could you tell me, in terms of the files,
21 how are the files maintained? Are they maintained
22 by chemical, by year?

23 A I don't really have enough knowledge about
24 how they're maintained to tell you that. I'm not
25 responsible for them.

1 Q What you are saying is, when you say they
2 weren't concealed, they would have been easy to
3 find?

4 A Shouldn't have been terribly difficult to
5 find.

6 Q Assuming I weren't in this case but I was
7 interested in the subject and I didn't know what I
8 knew from the case and I had full authority and I
9 came in the building and I called Barbara and I said
10 I wanted to know what Shell knew about, had been
11 told about the leukemia risks of benzene in 1943.
12 Assuming, just putting aside for a minute that
13 she didn't know anything about this case and the
14 dispute that we are having, how long do you think
15 it would have taken her to find that document?

16 A I don't have any idea.

17 Q I mean, two days, a month, an hour?

18 A I can't tell you. They generally responded
19 reasonably promptly to me when I needed information.

20 Q And as far as you know, this document was
21 readily accessible and could have been accessed?

22 MR. MOORE: That's been asked and answered
23 several times.

24 A As far as I know.

25 MR. SIMON:

1 Q Who else besides Barbara and Ms. Funk knew
2 about the existence of the document?

3 A Well, I don't know that they specifically
4 knew. Okay? I'm not telling you that they
5 specifically knew. I'm telling you that they had
6 files that it might have been found in. I'm not
7 telling you that they specifically knew, because I
8 don't know, because I've not discussed with either
9 one of them the existence of the document. You are
10 talking about people now that I am aware of that
11 know or knew?

12 Q Right.

13 A It was -- let's see. I guess we could
14 start -- that know now or knew when? I don't know
15 when you want to start.

16 Q Let's take people that knew prior to the --
17 prior to the first day of January of 1991.

18 MR. MOORE: Why don't we take it as of the
19 date he separated from Shell? Wouldn't that be a
20 more realistic date?

21 MR. SIMON: Well, I don't know what
22 distinction is made. I just took 1991 because
23 I thought it was the date this brouhaha started.

24 MR. MOORE: I'm just suggesting -- why don't
25 you, if you will, ask him who may have known as of

1 the date he separated from Shell. Then maybe he has
2 some other information after that.

3 MR. SIMON:

4 Q Tell me what day you separated from Shell
5 again.

6 A February 28, 1991. 1990, I'm sorry.

7 Q Okay. Now, on February 28th, 1990, tell
8 me the people that you know knew of the existence
9 of the Soley document.

10 A Okay.

11 MR. MOORE: The question is that you know,
12 not who you suspicioned or thought might have known
13 or whatever.

14 A The general counsel of Shell Oil Company,
15 Allen Lackey.

16 Q Spell his name, please.

17 A L a c k e y.

18 Q How do you know he knew?

19 A [No reply]

20 MR. MOORE: Is that something we need to
21 discuss?

22 MR. COLLINS: Yes.

23 MR. MOORE: Okay.

24 MR. SIMON: Do you want me to go out for a
25 second?

1 MR. MOORE: Well, why don't you go ahead --

2 THE WITNESS: Let's take a break. Let's
3 talk about that. I'd like to take a break.

4 MR. SIMON: Okay.

5 [Recess]

6 MR. MOORE: Shell objects to the last
7 question posed, on the grounds that the inquiry
8 directed to the witness relates to a specific
9 document and conversations between members of the
10 legal department of Shell relating to a specific
11 document. Those conversations related to a specific
12 document in the context of ongoing litigation that
13 took place or was taking place at the time of the
14 meeting and therefore we believe is a privileged
15 communication. Moreover, because the question
16 relates to a single document, it is not within the
17 scope of the discovery.

18 And let me say this. As I understand it,
19 to the extent that the document is segregated or
20 can be included in a practice of segregation, you
21 are entitled to go into that. But I respectfully
22 suggest that communications of the existence of
23 that document between Mr. Faulk and those who
24 are his superiors or contemporaries in the legal
25 department as it relates to litigation matters is a

1 privileged communication. Accordingly, we object to
2 the question and assert the privilege that has just
3 been identified.

4 MR. SIMON: Okay. Let me see, I think we
5 can maybe respect the privilege and maneuver around
6 it by asking limited questions. I'm going to try
7 and see how we do.

8 MR. MOORE: That's fair enough. And,
9 again, you are entitled to deal with segregation,
10 but I think you are not on that course right now.

11 MR. SIMON: Okay. I want to avoid any
12 questions you've had with any lawyers so that I
13 find out about cases that are not -- that may be
14 privileged in your legal thinking.

15 MR. MOORE: But not only are you not
16 entitled to find out about cases that are not in the
17 public domain, but you are not entitled to discover
18 the conversations between or among Shell lawyers
19 that resulted in defense strategy or posture or
20 however they thought Shell should best be defended
21 in any particular case. And that is the area into
22 you were beginning to go.

23 MR. HOBSON: I thought that the question
24 had to do with who knew. And he gave an answer.

25 MR. MOORE: Well, he did. And the way that

1 the guy knew is because of conversations --

2 MR. HOBSON: Okay. We don't want the
3 conversations. I mean, he knew, and when he knew
4 had nothing to do with conversations.

5 MR. MOORE: Well --

6 THE WITNESS: That is the conversation.

7 MR. MOORE: It did have something to do
8 with the conversation. There's no way he knew
9 except that he discussed it with him in the context
10 of litigation. But go ahead and let's see where we
11 go.

12 MR. SIMON: Let's see if we can artfully
13 get around getting anything that would be
14 privileged.

15 MR. MOORE: But let's don't waste time
16 by trying to artfully deal with matters that are
17 objectionable.

18 THE WITNESS: For my purposes on the
19 record, as former counsel for Shell, I am, of
20 course, obliged to respect any privilege they
21 assert, and am relying upon Shell's counsel at these
22 depositions to assert such privileges as they see
23 fit.

24 MR. SIMON:

25 Q So what you are saying is that Mr. Moore

1 represents Shell today and you are appearing today
2 on behalf of Shell, is that correct?

3 A I'm appearing, I suppose, here as --

4 MR. MOORE: I think that what he said is
5 he is respecting the assertion of privilege made
6 by Shell. As a lawyer, he can't do anything but
7 that. I think we would all agree to that.

8 MR. SIMON: Let's go back now.

9 Q Mr. A. L. Lackey. What was the time frame
10 in which --

11 MR. COLLINS: Excuse me. That's an
12 improper name.

13 MR. SIMON: Would you correct me?

14 MR. COLLINS: His name is S. Allen Lackey.

15 MR. SIMON: Let the record reflect that
16 last year when we were here with Mr. Zatz I called
17 him Charlie and his name is Cliff. I'm just bad
18 with names. There's no insult intended. We've
19 shown proper respect by calling him Mr. Lackey.
20 It has its own problems, but there's no inference
21 in my tone of voice there, either.

22 MR. MOORE: No, no, no. Let's go ahead.

23 MR. SIMON: Okay.

24 Q What was the time frame, to your knowledge,
25 in which Mr. Lackey was aware of the Soley document?

1 A I'm assuming we're not asserting a
2 privilege as to the time of the conversation.

3 Q Right.

4 A Approximately 1986.

5 Q In that 1986 time frame, who else knew of
6 the existence of the Soley document?

7 MR. MOORE: Well, you may not -- we
8 object to the question as it may relate to any
9 conversations, information you may have given to
10 others in the legal department relating to your work
11 product as an attorney for Shell in preparation for
12 litigation or in anticipation of litigation. And if
13 your -- to the extent your answer includes that, we
14 object and ask you not to give that information.

15 A The existence of the document was never
16 disclosed outside the context of giving legal advice
17 on pending cases and overall liability evaluation to
18 my superiors at Shell. So I can't give you any
19 further information.

20 MR. SIMON: Well, I think we can get names
21 and time frames without getting into what advice you
22 gave them or what your strategy was or what cases
23 were involved.

24 MR. MOORE: Well, the document -- and,
25 again, Ron, I mean, we're trying to deal with the

1 question of segregation of documents.

2 MR. SIMON: I understand.

3 MR. MOORE: And your questions aren't
4 relating to that at all.

5 MR. SIMON: Well, I believe they are,
6 because this is one of the segregated documents
7 that wasn't produced. And that's essentially --

8 MR. MOORE: Well, you have asked him
9 about -- if that's true, then you've already asked
10 him all that you are entitled to ask him about this
11 document. Because he testified to where it was.

12 MR. SIMON: I hear what you are saying.

13 MR. MOORE: And he testified how it got
14 there. Now, if you want to -- the legal significance
15 of all that is up to someone else to decide, not up
16 to this witness.

17 MR. SIMON: I'm not asking its legal
18 significance. I'm asking him who else -- we're
19 trying to determine -- and I understand there's going
20 to be -- you know as well as I do there's going to be
21 endless motions and disputes filed about whether
22 this was proper or not. All I'm asking is who else
23 during that 1986 time frame knew about the existence
24 of the document.

25 MR. MOORE: Forget about the existence. I

1 know you think the document has certain significance
2 in terms of your case, and we may debate that for a
3 long, long time. But whether or not the document is
4 segregated or was segregated and should have been
5 produced when your discovery requests were made,
6 that's what we're talking about.

7 MR. SIMON: That's exactly what we're
8 talking about.

9 MR. MOORE: Exactly. And so who knew about
10 it other than this gentleman, I respectfully suggest
11 that if their knowledge came about in work product
12 terms that you are not entitled to discovery.

13 MR. SIMON: Well, that's exactly what we're
14 here to decide, which is this very issue. Who knew
15 about it is the question.

16 MR. COLLINS: No.

17 MR. MOORE: Well, I disagree with you. But
18 you've already established that this gentleman, who
19 was an employee of Shell, knew about it.

20 MR. SIMON: We've also established that it
21 was in the files, according to his testimony, at
22 HS & E.

23 MR. MOORE: That's right.

24 MR. SIMON: And that librarians could get
25 it and that the general counsel knew about it. I

1 want to know who else knew about it.

2 MR. MOORE: Well, and to the extent that
3 you are divulging information that came about
4 because of legal advice that you gave either in
5 preparation of litigation or in anticipation of
6 litigation, the privilege is asserted.

7 MR. HOBSON: Are you asserting the
8 privilege as to the name of the person who he
9 knows knew? Just the name of the person?

10 MR. MOORE: Well, if he knows that he
11 knew because of what he told him in conveying
12 legal advice, yes, I am asserting the privilege.

13 MR. PICKLE: Herschel, at least as I've
14 seen, we have the cart before the horse here. You
15 are saying: "Here's a conversation. Now, who did
16 you have the conversation with?" Clearly that seems
17 to me to be getting into privileged areas of what
18 was discussed with whom.

19 MR. HOBSON: No. The questions that
20 have been posed have not even mentioned the word
21 "conversation." All they've said is: Who do you
22 know, through any mechanism, had knowledge of the
23 existence of this document?

24 MR. MOORE: You are right. And the witness
25 began to tell you, but realized that he knew that

1 because of conversations which, as explained to me,
2 are work product that are privileged.

3 MR. HOBSON: The conversations may be
4 and probably are. But we're not asking about the
5 conversations, just the identity of the person that
6 he has personal knowledge of who knew.

7 MR. MOORE: I understand that.

8 MR. PICKLE: You are, in essence, asking,
9 Herschel, which clients he discussed this subject
10 with. And I think clearly that is privileged,
11 because you are asking the subject matter of the
12 discussion beforehand.

13 MR. SIMON: No, Hugh, we're not even asking
14 clients. He was a Shell employee in 1986. We're
15 trying to find out --

16 MR. MOORE: Ron, may I suggest that for the
17 rest of this deposition you just refer to people as
18 Mister? Because you haven't got anyone's name right
19 yet.

20 MR. SIMON: I certainly will. But it won't
21 help. But I'll call you all Mister.

22 MR. PICKLE: Just refer to gentlemen.

23 MR. MOORE: Or boy or whatever. Because
24 you don't know anybody's name here and you haven't
25 got it right yet.

1 MR. SIMON: Haven't I gotten yours right?

2 MR. MOORE: No. And that's not Hugh. But
3 that's all right. We're going to do better as we go
4 along.

5 MR. SIMON: I stand chastised and I plead
6 guilty. But I can only tell you that I do not have
7 malice aforethought. I'm performing to my complete
8 confidence.

9 MR. MOORE: I know that.

10 MR. PICKLE: In the interest of time,
11 though, it seems to me the privilege has been
12 asserted. And if you want to take that up with the
13 judge, we can take that up with the judge. But at
14 least from the assertion of privilege on behalf of
15 Shell, that's where it stands.

16 MR. SIMON: I just want to ask a very
17 specific question and then we'll mark the transcript
18 and then we'll go from there.

19 Q In the 1986 time frame, tell me who within
20 Shell you know knew of the existence of the Soley
21 document.

22 MR. MOORE: Do you understand the privilege
23 that's been asserted, Mr. Faulk?

24 THE WITNESS: Right.

25 MR. MOORE: All right.

1 A And I understand that with respect to
2 communications and persons who would have learned
3 about the existence of the document through
4 communications from me in an attorney-client
5 relationship, I'm being instructed not to answer
6 that question.

7 I have disclosed to you the persons that
8 I'm aware of at HS & E who may have been aware of
9 it. The rest of the people, including Mr. Lackey,
10 only became aware of that through privileged
11 attorney-client communications. So I must refuse,
12 on advice of counsel.

13 [THE TRANSCRIPT WAS MARKED]

14 MR. SIMON:

15 Q I believe you said that -- you referred to
16 the fact that people found out about the existence
17 of the document from you. Do you have any knowledge
18 of anyone within Shell that had any information
19 about the existence of the document in that time
20 frame that did not get it from you as part of your
21 work on behalf of Shell as an attorney?

22 MR. MOORE: Other than those already
23 identified as the librarian types?

24 MR. SIMON: Yes, sir.

25 A No.

1 MR. SIMON:

2 Q So then the privilege is asserted, as I
3 understand it, because everyone other than the
4 librarian types who found out about the existence
5 of the Soley document in 1986 found out about it
6 because you told them about it because -- in some
7 way because of your representation of Shell?

8 MR. MOORE: That he is aware of.

9 A Yeah. Let me qualify the answer. When you
10 say "everyone," there may have been a lot of people
11 that knew about the document. Of the people that
12 I'm aware of, other than the people in the HS & E
13 department that I have identified, they would have
14 learned about it through privileged attorney-client
15 communications from me.

16 MR. SIMON:

17 Q From you?

18 A Yes.

19 Q No one came to you and told you about the
20 existence of it?

21 MR. MOORE: Keep in mind he has already
22 told you he doesn't recall how he came into the
23 knowledge that this document existed.

24 A I -- yes, I've answered that question.

25 MR. SIMON: All right.

1 Q So your full knowledge and memory at this
2 point is there were people you told about it and you
3 regard that as privileged?

4 A On advice of counsel.

5 Q Who was the outside counsel in the Poston
6 case?

7 A [No reply]

8 Q If you remember.

9 A While I was working on the case for Shell?

10 Q Right.

11 A There was none.

12 Q And after you went to a joint counsel
13 situation, do you remember who it was?

14 A No.

15 Q Was the outside counsel informed of the
16 existence of the document?

17 A I have no idea.

18 Q After the outside counsel was hired, was
19 there someone in Shell's legal department that
20 continued to be in charge from Shell's point of
21 view?

22 A Yes.

23 Q Who?

24 A His name was Brynn Aurelius, A u r e l i u s.

25 Q Now I'm going to ask you a question and I

1 need you to explain something to me. When it was
2 transferred to outside counsel, was that -- and
3 then the responsibility, as I understand it, was
4 changed to Aurelius simply because you had different
5 responsibilities, when the case was actually
6 litigated by Shell, you did it, and Aurelius was
7 only involved when there was an outside counsel?
8 Is that correct?

9 A Mr. Aurelius became responsible for
10 managing the outside counsel. And I was not
11 typically responsible for such duties.

12 Q You were typically responsible for actually
13 doing litigation?

14 A Yes.

15 Q And once it became purely a management
16 of outside counsel, you didn't have that
17 responsibility?

18 A That's correct. As a general rule.

19 Q Okay.

20 What was the next benzene leukemia case you
21 remember working on for Shell?

22 A It was a case called Keith Peterson.

23 Q Tell me about what the exposure was, where
24 the case was filed --

25 A The allegations of the case -- the case

1 was filed here in Harris County against a number of
2 defendants, one of whom was Shell. The case, for
3 whatever reason, was not a joint defense insofar as
4 Shell was concerned. Shell did not join the joint
5 defense. The allegations were that Mr. Peterson
6 developed a myeloproliferative disorder from
7 exposure to various solvents at his place of
8 employment, which I believe was some -- was
9 I think Fuller O'Brien Paint Company.

10 Q What was the Shell product that was alleged
11 to be implicated?

12 A As I recall, the only Shell product that I
13 remember was methyl ethyl ketone.

14 Q What was your responsibility in the case?

15 A I was lead counsel for Shell.

16 Q Did the case go to trial?

17 A It did not.

18 Q Was it dismissed or settled, or both?

19 A It was settled.

20 Q Was the existence of the Soley document
21 disclosed in that case?

22 A No.

23 Q I had asked you, I thought, what the next
24 benzene leukemia case was. And then you responded
25 with this case, which I understood to be a methyl

1 ethyl ketone case. Explain to me why --

2 A The allegation was that Shell's methyl
3 ethyl ketone contained a certain contaminant
4 percentage of benzene.

5 Q Okay.

6 What's the next benzene leukemia case you
7 worked on?

8 A I think it was a case called Zeigler.
9 Z e i g l e r.

10 Q Where was it filed?

11 A It was in Beaumont, in Jefferson County.

12 Q What were the allegations in that case?

13 A The allegations were that the decedent --
14 MR. MOORE: I'm sorry.

15 MR. SIMON: He wanted to stop because you
16 were talking. Do you want him to wait or not?

17 MR. MOORE: I'm sorry.

18 A The allegations were that the decedent died
19 of I think acute myelogenous leukemia allegedly as a
20 result of exposure to benzene during his work for
21 Gulf States Utilities as a draftsman.

22 Q Do you remember the time frame of his
23 exposure?

24 A 1960s, I think. As I recall.

25 Q What was the Shell product that he was

1 allegedly exposed to?

2 A Benzene.

3 Q What was the result of the case?

4 A It was settled.

5 Q Was the existence of the Soley document
6 disclosed in that case?

7 A No.

8 Q Who was the outside counsel in that case?

9 A Mr. Hobson.

10 MR. HOBSON: I was for the plaintiff. You
11 meant for Shell, I think, though. I don't think
12 Shell had an outside counsel.

13 THE WITNESS: No, we did not have an
14 outside counsel.

15 MR. SIMON:

16 Q What's the next benzene leukemia case you
17 worked on?

18 A There were a series of cases in Monterrey,
19 California, which were coordinated for trial in
20 San Francisco Superior Court, called the benzene
21 exposure cases, the lead plaintiff being a
22 Mr. Santiago.

23 Q What was your role in those cases?

24 A I was lead counsel for Shell.

25 Q Those cases were settled, weren't they?

1 A They were.

2 Q Did you disclose the existence of the Soley
3 document in those cases?

4 A No.

5 Q Who was Shell's outside counsel in that
6 case?

7 A We had local counsel. I believe the
8 Sheppard, Mullin, Richter & Hampton firm,
9 San Francisco office.

10 Q Was the existence of the Soley document
11 disclosed to them in that litigation?

12 MR. MOORE: I object as to -- that's a
13 communication between lawyers respecting conduct of
14 litigation, it is a privileged communication, and we
15 assert the privilege.

16 A On advice of counsel, I must not answer
17 you.

18 MR. SIMON: I believe that under Texas
19 law, the last time I looked, the lawyer work-product
20 privilege does not continue when the case is over.

21 MR. MOORE: Well, that may be true under
22 Texas law, but we're not dealing with Texas law.
23 I don't know what the Texas law is.

24 MR. SIMON: It is the Texas law, I
25 believe. We're here in Texas, Mr. Faulk is a

1 Texas lawyer, Shell is here in Texas.

2 MR. MOORE: But the law that governs
3 whether or not that's a privileged communication
4 is the law that applies to the cases of Carter and
5 Riddle and et cetera versus Shell and others. And
6 I believe it's going to be the federal law, the
7 Federal Rules of Evidence.

8 MR. SIMON: That's right. But the question
9 of what the privilege is is a question of state
10 law. And I believe under Erie the court would apply
11 the law of Texas with regard to these questions.

12 MR. COLLINS: We'll litigate that. We are
13 not willing to waive privilege in this deposition,
14 in this case.

15 MR. SIMON: Are you aware that Texas law
16 doesn't give you privilege in this situation?

17 MR. MOORE: Well, the privilege -- I have,
18 on behalf of my client, asserted the privilege. And
19 then maybe -- maybe when this deposition is concluded
20 we will sit down and compare notes and see where we
21 go. If we can't resolve them, we'll have to present
22 them to the judge for decision.

23 MR. SIMON: I'm only concerned that we're
24 here, and having researched Texas law on this point,
25 it's clear that it doesn't apply, and I'm concerned

1 that it's being raised and the Texas lawyers sitting
2 here know that and they are asserting the privilege
3 anyway.

4 MR. PICKLE: You are asking specifically
5 for communications between counsel on a case. That
6 is not work product. That is communication as part
7 of the case and part of the defense. The privilege
8 has been asserted again. I don't see any reason in
9 debating it today. We'll just take it up with the
10 judge.

11 MR. SIMON: Well, what is the privilege
12 if it's not work product communication between
13 counsel? Tell me what legal privilege that is
14 if it's not the work product.

15 MR. MOORE: We've already asserted a
16 privilege.

17 THE WITNESS: And on their instructions,
18 I must respect it.

19 MR. SIMON: Let's mark this part of the
20 transcript, please.

21 [THE TRANSCRIPT WAS MARKED]

22 MR. SIMON:

23 Q What was the next benzene leukemia case you
24 worked on?

25 A I guess my recollection is that there were

1 a series of cases from Shell's Deer Park refinery.
2 I can't recall exactly how many. And I can't recall
3 which -- certainly at least one or two alleged
4 benzene exposures to Shell employees which resulted
5 in leukemia, but I can't recall how many or which
6 did. We referred to those as the Deer Park punitive
7 damage litigation. They were here in Harris
8 County. Well, actually, they were originally mostly
9 filed in Jefferson County and were transferred back
10 to Harris County venue by rulings.

11 MR. SIMON: Let's mark this No. 4, please.

12 [Exhibit 4 marked]

13 THE WITNESS: I presume you want me to
14 review it.

15 MR. SIMON:

16 Q I want you to review it for a second and
17 tell me if you know what it is.

18 A Part of the document I am familiar with,
19 other parts I'm not.

20 Q Which parts are you familiar with?

21 A Beginning on the third page of the
22 document, a report.

23 Q You are saying you are familiar with that
24 part or not familiar with it?

25 A I have seen this, yes, I'm familiar with

1 this part.

2 Q Would you tell me what it is?

3 A It appears to be a report on the Skeen v.
4 Monsanto case that was prepared sometime in February
5 1989.

6 Q Who was it that prepared that report?

7 A Mr. Tyler and myself.

8 Q You joint authored it?

9 A I think that's fair.

10 Q Was it typed in his office or this office?

11 A I think the final draft was done in his
12 office.

13 Q But you worked on it together?

14 A Yes.

15 Q I'm going to refer you, with regard to that
16 article -- forgive me for reaching across -- to Page
17 23, which has biographical information on it. I ask
18 you to look at that for a second first, then I'll
19 ask you some questions about it.

20 A Okay.

21 Q First of all, why weren't you disclosed to
22 be one of the authors of it?

23 A I don't know.

24 Q Was there another -- I notice you just
25 flipped the page. Was there an earlier edition of

1 it that had you disclosed as one of the authors?

2 A There is a -- I don't know if it's earlier.

3 Q Is there another draft that had you -- with
4 another page with your biographical information on
5 it?

6 A I seem to recall seeing something like
7 that.

8 Q So this is just -- now, going back to
9 Mr. Tyler, I'm going to the last paragraph --
10 next-to-the-last paragraph, sir, it says, I believe,
11 Mr. Tyler currently represents Shell Oil Company in
12 six Skeen-type cases, five of which are against
13 O'Quinn. And I'm trying to pin down now, are those
14 six Skeen-type cases all Deer Park cases?

15 A I believe that's true, yes.

16 Q And I recall in Mr. Tyler's deposition in
17 another case he referred to nine cases. I guess
18 I'm trying to get a sense. Is there a failure of
19 memory? Did the number change in time? How many
20 Skeen-type cases were there up at Deer Park?

21 A I think I've just told you I don't recall
22 exactly how many there were. There were some
23 primary cases under the Texas Constitution punitive
24 damage remedy, and there were some workers comp
25 cases, and I don't know which were which and how

1 many. Less than 10. I can't tell you any more
2 than that.

3 Q And what was your role in those cases?

4 A I was lead counsel for Shell.

5 Q Was there an outside counsel at all in
6 those cases?

7 A Yes.

8 Q Who was that?

9 A Mr. John Tyler.

10 Q You are going to have to help me again,
11 because I don't pose my questions as well as I'd
12 like to. I believe I understood before that when
13 there was an outside counsel Shell didn't have a
14 lead counsel. Now, maybe you can explain to me
15 what -- clarify my misunderstanding for me, how it
16 was that Mr. Tyler was outside but you were still
17 the lead counsel.

18 A From time to time we hired outside counsel
19 to supplement our in-house resources on cases where
20 Shell lawyers would be lead counsel. And this was
21 an example of that.

22 Q Now, when was this document -- we're on Page
23 23 -- that you jointly authored with Mr. Tyler, when
24 was it written? It has a date on it.

25 A The date of the document is February 13th,

1 1989.

2 Q Now, had -- this is a review -- as I
3 understand it, it's a review of the Skeen trial,
4 two Skeen trials, isn't it?

5 A That's correct.

6 Q Did you actually go down and watch the
7 Skeen trials?

8 A Yes.

9 Q And did Mr. Tyler go down and watch the
10 Skeen trials?

11 A Yes.

12 Q And was he paid by Shell to go watch those
13 trials?

14 A He was. Not both trials. There were two
15 trials. The second trial was the one that was
16 observed.

17 Q Now, at the time he was paid to watch a
18 trial for Shell, was Shell a party in that Skeen
19 litigation?

20 A We were not.

21 Q To whom was this report, which is beginning
22 on the third page of Exhibit 4, distributed?

23 A To a large group of numerous people through
24 the Chemical Manufacturing Association.

25 Q Could you tell me -- go through the

1 process? How did it come to be written?

2 MR. MOORE: May we have a break?

3 [Recess]

4 MR. SIMON: Read back the question.

5 [The record was read as requested]

6 A The report was a result of some -- our study
7 of what had happened in the Skeen case. And I had
8 discussed with a number of people associated with
9 the CMA our work we had been doing, and they
10 expressed an interest in what had happened,
11 and we elected to offer them a report.

12 MR. SIMON:

13 Q And was the report something you did on
14 your own or was it something paid for -- you did
15 with your time that you were paid for by Shell?

16 A To the extent that I did anything on this,
17 I was doing this on my own time.

18 Q You didn't do this on behalf of Shell?

19 A Well, I guess to the extent the opinions
20 and information I got. But the actual writing of
21 the report was not something I did on Shell's time.

22 Q You didn't do it here in your office?

23 A [Moving head side to side]

24 Q You didn't use your secretary here to do
25 it?

1 A Huh-uh.

2 Q What about Mr. Tyler? Was that part of his
3 assignment for Shell, to do this paper?

4 A No.

5 Q So Shell wasn't billed for the time?

6 A Not that I'm aware of.

7 Q Did you review his bills?

8 A Yeah, usually.

9 Q Were they detailed?

10 A I think so.

11 Q Who at CMA did you discuss this paper with?

12 A Well, when?

13 Q Tell me -- how long did it take to get the
14 thing from the idea hit you till you actually wrote
15 it?

16 A Let me see. The trial was not over at the
17 time. I don't think the trial was over at the time
18 this was written. The trial had gone on for four to
19 six weeks. I really can't estimate for you. It was
20 something that was ongoing during the trial of the
21 case.

22 Q Was this distributed to -- how was it
23 distributed by CMA? Do you know?

24 A I -- people asked -- people were notified,
25 and we had people that called and asked for it, we

1 had -- it was handed out through the CMA toxic tort
2 committee to company subscriber members. I don't
3 know specifically all the distribution, but that's
4 how it was done. It was handed out at seminars.

5 Q What seminars was it handed out at?

6 A It was handed out at a -- well, I don't
7 know if it's a seminar. Yeah, it was handed out at
8 a seminar in San Francisco, toxic tort litigation.
9 It was handed out at the regular quarterly meeting
10 of the CMA toxic tort group. I don't remember
11 exactly when or where that was at the time.

12 Q Did people write to you to get copies of
13 it?

14 A A couple of people may have.

15 Q And did just you send it out?

16 A Sure.

17 Q Did you send it out from here?

18 A Yeah.

19 Q You didn't send it out from your home?

20 A Oh, no.

21 Q And the Xerox copying was paid for by
22 Shell? Or did you pay for it personally?

23 A Could have been done through Mr. Tyler's
24 office, I'm not really sure. Shell was aware that
25 this offer had been made and agreed with it being

1 sent out, shared.

2 Q And your secretary sent it out if people
3 called here and wanted it?

4 A Sure, if we had copies there and somebody
5 wanted one.

6 Q Now, who was the plaintiff's counsel in the
7 Deer Park cases?

8 A The counsel who I worked with was John
9 Leach. And there was another fellow by the name of
10 Dennis Reich.

11 Q What ultimately happened with those cases?

12 A They were, to my knowledge, settled, and we
13 got summary judgment in one or two of them.

14 Q Were the Soley documents produced in the
15 Deer Park cases?

16 A No.

17 Q Was their existence acknowledged or
18 indicated in any way in the Deer Park cases?

19 A No.

20 Q Did you coordinate the response of the
21 discovery requests by the plaintiffs -- the request
22 by the plaintiffs to Shell in the Deer Park cases?

23 A What do you mean by coordinate?

24 Q Were you the person to whom they came?

25 A I was the person who received their

1 requests, yes.

2 Q And how did you set out -- what did you do
3 when you got their requests?

4 MR. MOORE: Excuse me. Are you asking him
5 the process through which he went as a lawyer to --

6 MR. SIMON: Not his mental process, just
7 how he gathered them --

8 MR. MOORE: That's what you just asked him,
9 what his mental process was. That's what I
10 understood you to say.

11 MR. SIMON: I want to know his action
12 process, how he winds up getting the documents,
13 what he does.

14 MR. MOORE: Hasn't he already told you how
15 he went about doing that?

16 MR. SIMON: In other cases.

17 MR. MOORE: Hasn't that been asked and
18 answered?

19 MR. SIMON: In another case, not in
20 Deer Park.

21 MR. MOORE: I thought you asked him
22 generally how did he do it, and he told you, and
23 then you started asking him about Poston, and then
24 you went on up to where you are now.

25 MR. SIMON: You're right.

1 Q I just want to know how it was produced in
2 this case.

3 A No documents were produced in any of those
4 cases, as I recall.

5 Q Did the plaintiffs request documents?

6 A They did.

7 Q Then how is it that no documents were
8 produced?

9 A Motions were filed, referred to as Lone
10 Pine motions, based on the name of that case,
11 which required the plaintiffs to come forward with
12 scientific evidence of causation prior to Shell
13 undertaking the burden of responding.

14 And to my knowledge, all of those motions
15 were granted. And plaintiffs never did come
16 forward. No documents -- no responses were made.

17 Q After the evidence of causation and the
18 summary judgment was heard on those issues, the
19 cases were either dismissed or settled?

20 A There was never a summary judgment heard.
21 There was never a proof of causation tendered.

22 Q How were the cases resolved?

23 A They were settled.

24 Q Were any discovery requests made by the
25 plaintiffs in the Deer Park case?

1 A Yes.

2 Q And they were -- as I understand it, they
3 were just superseded by the Lone Pine motion that
4 was granted?

5 A Not all of them. Insofar as documents were
6 concerned, they certainly were.

7 Q And you, at the time that you filed the
8 Lone Pine motion, were aware of the existence of
9 the Soley document?

10 A I was.

11 Q You were aware that it was damaging to
12 Shell's position in the case?

13 MR. MOORE: Objection.

14 MR. COLLINS: Objection.

15 MR. MOORE: Wait a minute. That
16 necessarily is something that would go to work
17 product considerations and his thought processes
18 in conducting litigation.

19 MR. SIMON:

20 Q Did Shell file in the Lone Pine case any --

21 MR. MOORE: Lone Pine?

22 MR. SIMON: I'm sorry. Thank you.

23 Q In the Deer Park cases, did Shell file any
24 affidavits from experts dealing with the subject of
25 whether benzene caused leukemia?

1 A I don't believe so. Not to my
2 recollection.

3 Q Did they file any affidavits with regard to
4 the subject of whether the plaintiff's evidence that
5 benzene caused leukemia was inadequate?

6 A Not that I recall.

7 Q Did Shell ever list any experts in the
8 case?

9 A I don't believe so.

10 Q Why don't you just help me a bit? What
11 happened after the Lone Pine motion was granted
12 till the resolution of the case?

13 A Nothing that I recall.

14 Q In other words, the Lone Pine motion was
15 granted and then there was a settlement offer that
16 was accepted?

17 A As a general rule. Now, we did have
18 summary judgment questions on statutes of
19 limitations and things like that that were litigated
20 in a couple of the cases. But to my knowledge, no
21 further discovery was attempted by the plaintiffs
22 whatsoever.

23 Q What about by the defendants?

24 A Other than inquiries into medical records
25 and perhaps taking one deposition, I don't believe

1 that any other discovery was attempted by the
2 defendants. We did send out some routine
3 interrogatories at the beginning of the case for
4 purposes of gathering basic facts. But after the
5 Lone Pine motions, I don't remember initiating any
6 form of discovery except perhaps medical records.
7 Now, of course, the files may reflect otherwise.
8 I haven't reviewed them in two or three years.

9 Q Did Shell retain any experts in the
10 Deer Park case?

11 MR. MOORE: I object. Whether they
12 retained experts, you're not entitled to know that.
13 You've already asked him if they identified any
14 experts, presented any affidavits from experts, and
15 he told you he didn't recall, he didn't think so.

16 MR. SIMON:

17 Q Let's go back to the Monterrey, California,
18 case. Did Shell identify any experts in that case?

19 A I don't believe so.

20 Q In the Zeigler case, did Shell identify any
21 experts?

22 A I don't recall that we did. The case was
23 settled before that happened.

24 Q How about in the Peterson case?

25 A We may have. I don't remember.

1 Q What experts have you worked with in terms
2 of reaching opinion as to whether benzene caused
3 certain leukemia on behalf of Shell?

4 MR. MOORE: I object. You're not entitled
5 to that information.

6 MR. SIMON: I believe the reason I'm
7 entitled to it is because on the question of
8 segregation again the issue comes up whether the
9 Soley and other documents were given to the experts
10 for Shell.

11 MR. MOORE: Well, excuse me. That has
12 nothing to do with segregation. You're not entitled
13 to know any expert witness that any Shell attorney
14 has consulted or discussed anything with as it
15 relates to any litigated matter.

16 MR. SIMON: Let's mark the transcript.

17 [THE TRANSCRIPT WAS MARKED]

18 MR. SIMON:

19 Q Did you ever give the Soley document to
20 Dr. Wong?

21 MR. MOORE: I object to any communications
22 with any expert witness.

23 MR. SIMON: What's the grounds?

24 MR. MOORE: You're not entitled to
25 them. He can talk to any expert he wants to in

1 anticipation of litigation and preparation for
2 litigation. You're not entitled to go into reasons
3 for that or what his dialogue with an expert witness
4 may have been.

5 MR. SIMON: Subject matter of these
6 litigations is the fact and the purpose of the
7 segregation. Now we have clearly established on
8 the record that the documents existed, people knew
9 of their existence, they weren't produced. And in
10 terms of determining the purpose which the judge
11 spoke to very greatly on Tuesday, the purpose of
12 the segregation, one of the ways that we can infer
13 conclusions about the purpose is to determine to
14 whom else it was distributed.

15 MR. MOORE: Well, I just disagree with
16 you. And the witness shall not answer any questions
17 relating to communications between the witness and
18 the experts or potential expert witnesses as it may
19 relate to any matter in litigation or any matter in
20 anticipation of litigation.

21 MR. SIMON: Let me be clear again what I'm
22 asking for as I mark the transcript.

23 MR. MOORE: I understood your reasons,
24 Mr. Simon. And I don't think that your reasons are
25 valid or correct. And the witness shall not answer

1 those kinds of questions.

2 [THE TRANSCRIPT WAS MARKED]

3 MR. SIMON:

4 Q You conducted -- participated in a meeting
5 here at One Shell Plaza that discussed benzene
6 litigation at some point, didn't you?

7 MR. MOORE: What are you speaking of?
8 Are you talking about the meeting in Mr. Tyler's
9 office?

10 MR. SIMON: I believe there was a meeting
11 either on the 48th or 49th floor --

12 MR. MOORE: Mr. Tyler's office was on the
13 49th floor. Is that the meeting you are speaking
14 of?

15 MR. SIMON: There may have been many
16 meetings, I don't know, that's why --

17 MR. MOORE: That's what I'm suggesting. I
18 had no objection, and you are entitled to inquire
19 into the meeting in Mr. Tyler's office at which time
20 that paper was presented. The judge has said you
21 could do that. But meetings between the witness and
22 other lawyers at Shell in which matters relating to
23 litigation or in anticipation of litigation were
24 discussed, I respectfully suggest, the witness may
25 not respond to that.

1 MR. SIMON: I'm trying to ask about that
2 meeting. I just couldn't be specific because I
3 didn't know the date of it or any way to describe
4 it.

5 MR. MOORE: But you are talking about the
6 one in Tyler's office?

7 MR. COLLINS: Can we stipulate the meeting
8 we're talking about was the April 6, 1989, meeting
9 in Mr. Tyler's conference room?

10 MR. MOORE: Is that the day?

11 MR. SIMON: If you know that's the day,
12 I'd appreciate it. I don't know the day. I'm not
13 trying to be obstreperous.

14 MR. COLLINS: That is referenced in the
15 notices of deposition concerning in which case the
16 document concerning benzene defense and strategy of
17 Mr. Faulk is the subject matter?

18 MR. SIMON: Right. That's the meeting that
19 I'm talking about. I don't know whether it occurred
20 that day or not.

21 MR. MOORE: Okay. There's no objection to
22 that time.

23 THE WITNESS: You are asking if I
24 participated in that meeting?

25 MR. SIMON: Yes.

1 A Yes, I did.

2 MR. SIMON:

3 Q And you invited people to the meeting,
4 didn't you?

5 A I wasn't the only one who invited people,
6 but yes.

7 Q Who did you invite to the meeting?

8 A Ed Lowenberg of Exxon and any health
9 professional he chose to bring from that company;
10 Paul Trubenbach of Chevron and any health
11 professionals he chose to bring; Leslie MacDonnel
12 from Lyondell and any company health professional
13 within her discretion, whoever she selected. I
14 don't recall talking to anyone who was employed by
15 Texaco, but Texaco was invited. There may have been
16 other attendees. Those are the ones that spring to
17 mind right now.

18 Q Was Dr. Wong there?

19 A Oh, yeah, Dr. Wong was invited.

20 Q Did you invite Dr. Wong?

21 A I don't know whether I did or whether
22 Mr. Tyler did.

23 Q Was Dr. Irons at that meeting?

24 A Dr. Irons was there. I guess when we're
25 talking about participants I was thinking about

1 attendees and making a distinction. Dr. Irons was
2 there, yes, and was invited.

3 Q Was Dr. Stan Peer there?

4 A No.

5 Q Dr. Enterline?

6 A No.

7 Q Did you help plan that program?

8 A Yes.

9 Q With whom did y'all plan it?

10 A Well, there were a group of us that had an
11 interest in doing something like this, kind of based
12 on the research and information that we had in the
13 Skeen case and benzene information in general.

14 An interest was developed to have an
15 informational sharing meeting. I believe some of
16 the people I've just talked to you about talked to
17 me about what they wanted to hear, what they were
18 interested in.

19 And then I sat down with Mr. Tyler and we
20 kind of put together an agenda.

21 Q You and Tyler put together the agenda?

22 A Yeah. Yeah, we did.

23 Q And what was the purpose of the meeting?

24 A To share information that John and I had
25 developed as a result of observing the Skeen trial

1 and what -- and also information from my general
2 experience.

3 Q Do you remember, was this meeting conducted
4 on a weekday or weekend?

5 A It was a weekday.

6 Q Did you take a vacation day? Or did you
7 just --

8 A Oh, no.

9 Q Workday?

10 A Workday.

11 Q So your appearance there was part of your
12 work for Shell?

13 A No.

14 Q But you didn't take a vacation day?

15 A No.

16 Q Why isn't it part of your work for Shell,
17 the work at the meeting, then?

18 A I was not appearing there as a
19 representative or on Shell's behalf.

20 Q Why didn't you take a vacation day?

21 MR. MOORE: Asked and answered.

22 MR. SIMON:

23 Q Did you take annual leave?

24 A No.

25 Q Do you know who paid for Dr. Wong to come

1 to the meeting?

2 A I don't remember who paid for those things.

3 Q Did he pay for himself? Do you know?

4 A I don't know.

5 Q Do you know about Dr. Irons, who paid
6 Dr. Irons?

7 A I have no idea.

8 Q Do you know whether they were paid a fee?

9 A I don't know. I don't remember.

10 Q Did you ever know?

11 A I don't remember whether I ever knew.

12 Q Well, who was the principal planner of the
13 meeting, you or Mr. Tyler?

14 A I guess insofar as getting it to come off,
15 it would probably have been me, I suppose. But as
16 I say, I don't remember who invited Dr. Irons or
17 Dr. Wong. So I don't know what the arrangements
18 were. I don't recall what the arrangements were.

19 Q Did your secretary handle getting out the
20 invitations?

21 A I don't remember whether there were written
22 invitations extended or not.

23 Q Were there agendas sent prior to the
24 meeting?

25 A I don't remember.

1 Q Were there xeroxed materials handed out?

2 A There were.

3 Q Who prepared the materials?

4 A Do you mean who did the xeroxing?

5 Q Right.

6 A I believe Mr. Tyler's office.

7 Q Was the existence of the Soley document
8 disclosed at that meeting?

9 A It was not.

10 Q After the Deer Park cases, what were the
11 next benzene leukemia cases you worked on?

12 A I don't recall during my employment at
13 Shell that I worked on any others at this point.
14 Wait. I take that back. There was a case called
15 Guillot, G u i l l o t, I think. Cocounsel probably
16 can spell it better than I.

17 Q Was that Mr. Hobson's case?

18 A It was.

19 Q Just tell me what the allegations were in
20 that case.

21 A The allegations were that this person who
22 was a Shell employee developed some -- I'm not sure
23 it was a leukemia case, but developed some blood
24 disorder from which she died after being exposed
25 to -- I'm not sure whether it was pure benzenes

1 or solvents, while working as a painter for Shell.

2 Q What was the resolution of that case?

3 A I don't have any personal knowledge of
4 what the resolution was. Okay? Because it was not
5 resolved while I was at Shell. I left before it was
6 resolved.

7 Q Now, going back to the -- I believe
8 you testified that you became aware of the Soley
9 documents sometime in the mid-'80s, is that correct?

10 A That's the best estimate that I can give
11 you.

12 Q Now, in the cases you were involved in,
13 did you review specifically the discovery requests
14 from the plaintiffs that were propounded to
15 determine whether the Soley document was within the
16 request?

17 MR. MOORE: I object to. To the extent --
18 I mean, you are asking him for his mental
19 impressions as a lawyer and how as a lawyer he ought
20 to respond to any particular request. I haven't
21 objected to what you have asked up to this point,
22 but what he produced, what he didn't produce, the
23 decisions with respect to why anything was or was
24 not done, I respectfully suggest, are matters of
25 privilege.

1 MR. SIMON: I think that that's exactly why
2 we're here. Again, the question is: What was the
3 purpose of the segregation?

4 MR. MOORE: Then let's deal with -- you
5 haven't asked him about segregation of documents
6 yet.

7 MR. SIMON: I've been asking him --

8 MR. MOORE: Well, and --

9 MR. SIMON: -- pertinent questions to that
10 subject.

11 MR. MOORE: All right. Okay. All right.
12 But the question you just asked, I respectfully
13 suggest, is out-of-bounds, and we do assert the
14 privilege on his mental impressions and the
15 considerations he gave to whether or not certain
16 information should or should not be produced.

17 MR. SIMON: Let's mark the transcript.

18 [THE TRANSCRIPT WAS MARKED]

19 MR. SIMON: Let's go back to the deposition
20 notice. Do you have a copy of that?

21 MR. MOORE: Yeah.

22 MR. SIMON: I just want to read it and make
23 sure he's responsive to it.

24 THE WITNESS: Good exercise.

25 MR. PICKLE: I'm sorry, Ron. For my own

1 information, what case was your last question
2 directed to? Was it to the Guillot case or --

3 MR. SIMON: General. All cases.

4 Q I'm just going to read it out. If we both
5 see it, that doesn't offend you, Mr. Faulk?

6 A Is there an extra one? Not that I'm
7 offended at all.

8 MR. SIMON: Could you read over it with
9 Rob? Sir?

10 MR. MOORE: "That person."

11 MR. SIMON:

12 Q I'm now reading from Page 2 of Exhibit 1,
13 which is the 30(b)(6) deposition notice. And I want
14 to ask you -- you've earlier testified, I believe,
15 that you are the designated representative of Shell
16 Oil Company on a number of these subjects, is that
17 correct?

18 A That is correct.

19 MR. MOORE: Well, I'll state on behalf of
20 Shell that that's correct.

21 MR. SIMON: Okay.

22 Now, just for the record, I'm going to Page
23 2. I have before me another document that I want to
24 mark.

25 [Exhibit 5 marked]

1 MR. SIMON:

2 Q Could either my distinguished colleague
3 from Roanoke or Mr. Faulk identify for me what
4 Exhibit 5 is and --

5 A For the record, I cannot.

6 MR. MOORE: No. 5 is a listing by number
7 of the boxes that we understood -- "we" being Shell
8 understood to be the primary scope of this
9 examination and the reason for the request that
10 Shell designate someone as a 30(b)(6) witness.

11 Mr. Faulk, while an employee of Shell, had
12 a practice, as you'll find out, of taking certain
13 documents from completed cases and putting them away
14 in a separate place. And this, what you have marked
15 as Exhibit 5, is a listing of those boxes as well as
16 a very brief description of the contents of those
17 boxes.

18 MR. SIMON: Could you tell me who prepared
19 this exhibit?

20 MR. COLLINS: It was prepared, under my
21 direction, by my paralegal.

22 MR. SIMON: Would you identify that person
23 by name?

24 MR. COLLINS: Her name is Susan Sherman.

25 MR. HOBSON: Do you know when it was

1 prepared, Mr. Collins?

2 MR. COLLINS: In the past week.

3 MR. SIMON: Do I understand that it's
4 Shell's view that this is -- this list of documents
5 is responsive to the documents requested on Page 2,
6 and that you'll make these available to us?

7 MR. MOORE: They are here, they are the
8 documents that were stored in Mr. Tyler's offices
9 to which he referred when his deposition was taken.
10 And I think as you question the witness he will
11 identify how all that came to be.

12 MR. SIMON: And you don't have any -- and
13 these are the documents that you'll make available
14 to us?

15 MR. MOORE: Well, they are the documents.
16 We assert a privilege with respect to some of them.
17 And some of them are not responsive to any issue in
18 this litigation. But they are the documents, many
19 of -- most of which or many of which will be made
20 available for your inspection.

21 MR. SIMON: Well, can you indicate for us
22 which -- since you've given us a list now, which you
23 are going to assert a privilege on so we can know
24 which aren't available?

25 THE WITNESS: I can't.

1 MR. SIMON: I know. I'm sorry, Mr. Faulk.
2 I understood that you couldn't.

3 MR. MOORE: Well, why don't we wait till we
4 get to the documents? The documents we're asserting
5 a privilege on are documents -- for example, and you
6 haven't had a chance to review that, I don't guess,
7 but a lot of them are his case files. As a matter
8 of fact, the majority of that material represents
9 case files, matters about which Mr. Faulk appeared
10 as counsel for Shell and documents accumulated
11 during the course of that representation. But I
12 really don't believe we're going to have a big
13 argument about any of this. So why don't you go
14 ahead and examine him and we'll see where we go.

15 MR. SIMON: Go over the documents later?
16 Okay. That's fine.

17 Q I'm just going down here. We've asked
18 Shell to produce, as well as documents, a witness.
19 Now, are you a witness for purposes of determining,
20 No. 1, the extent and purpose of segregation of any
21 documents relating to health hazards of benzene?

22 A To some extent.

23 MR. MOORE: The only point that I wish to
24 make, again, is that it's our understanding --
25 meaning Shell's understanding -- that the reason

1 that we're having this session is primarily the
2 so-called discovery of the 48 boxes in Mr. Tyler's
3 office that came about because somebody tried to
4 sell documents to Mr. Hobson and then Mr. Tyler's
5 deposition was taken and it was found that these
6 various boxes were there. These boxes are the
7 result of the effort of Mr. Faulk --

8 MR. COLLINS: Primarily.

9 MR. MOORE: Yeah, primarily the efforts of
10 Mr. Faulk. He is the only person in the -- who has
11 ever worked for Shell who can tell you or Mr. Hobson
12 or anyone else how these came into being. So that's
13 the reason -- that's why he's been designated.

14 MR. SIMON: I'm just --

15 MR. MOORE: So when you say segregation of
16 any documents, the only documents that he can talk
17 about in terms of -- as I understand what you mean by
18 segregation -- are those that were placed in these 48
19 boxes.

20 MR. SIMON: And in the blue vinyl binders.

21 MR. COLLINS: Which is part --

22 MR. MOORE: Well, that's all part of the 48
23 boxes.

24 MR. COLLINS: And let me make one other
25 thing. You keep referring to it as a blue vinyl

1 binder. There are multiple binders of multiple
2 colors.

3 MR. SIMON: One of the things, just so you
4 understand, that we will obviously request to do
5 before we go is not only look at these documents but
6 look at the place where they are kept and actually
7 see this binder. That's one of the things we want
8 to do. We don't want to see a copy.

9 MR. MOORE: See "this binder"?

10 MR. COLLINS: You'll have to describe what
11 "this binder" is. We will show you the documents --

12 MR. MOORE: Let's wait till we get there.

13 MR. COLLINS: -- in those 48 boxes.

14 MR. MOORE: We'll take the court reporter
15 back in the room with us.

16 MR. COLLINS: Can we go off the record just
17 a minute?

18 MR. SIMON: Sure.

19 [Discussion off the record]

20 MR. SIMON: Back on the record.

21 MR. MOORE: We don't think they've been
22 segregated, but you say --

23 MR. SIMON: I understand.

24 MR. MOORE: -- that may be another
25 subject. We're frankly not prepared to deal

1 with that right now.

2 MR. SIMON: Okay.

3 Q The extent and purpose of segregation of
4 any documents relating to the health hazards of
5 benzene. You are the 30(b)(6) witness on this
6 subject, subject to you don't know of any, you only
7 know of the ones you've been involved in, is that
8 correct?

9 A To the extent that -- I have a lot of
10 problems -- as a witness, I have a lot of problems
11 with the word "segregation." Okay? But to the
12 extent that you are meaning this storage of
13 documents at Tyler's office as being a segregation,
14 I can talk about that. And, you know, I can talk to
15 you about what I know, and that's all I can talk to
16 you about. And so the best way to deal with it is
17 to ask questions about it rather than to have me
18 object and try to explain it to you.

19 Q You are the witness on the identity of all
20 documents from Shell pertaining to health hazards
21 from benzene which have been segregated, subject to
22 your comments last time?

23 A To my --

24 MR. MOORE: He didn't make the decision
25 that he was going to be Shell's representative.

1 Shell made that decision. Now, I can tell you that
2 Shell made the decision because he's the person who
3 has the knowledge about these so-called 48 boxes.
4 I can also tell you that Shell's view of all of this
5 is that the only segregation which ever occurred as
6 we believe to be defined by Judge Kiser -- and
7 although I didn't participate in the telephone
8 conference day before yesterday, or whenever it was,
9 as modified by whatever he said in that conference,
10 the only segregated documents are those in these
11 boxes. And that's why this gentleman is -- has been
12 presented to you as a 30(b)(6) witness.

13 Now, if we are going to get into an
14 argument about there may be some other segregation,
15 we need to talk about that.

16 MR. SIMON: No, we're not going to have an
17 argument about that.

18 MR. MOORE: Okay.

19 THE WITNESS: I'm amazed.

20 MR. SIMON:

21 Q With what, sir?

22 MR. MOORE: That there's no argument.

23 A That there's no argument.

24 MR. MOORE: Let's don't promote another
25 argument. Come on with the questions.

1 MR. SIMON:

2 Q You were aware of -- just to be clear so we
3 cannot argue if we don't have to, are you aware of
4 any segregation of any documents regarding the
5 health hazards of benzene other than the one that
6 Mr. -- my friend from Roanoke just described?

7 A Not within the way that term has been
8 explained to me.

9 Q Okay.

10 Are you aware of how the documents -- any
11 documents regarding Shell's knowledge of health
12 hazards of benzene are arranged at Shell?

13 A I think I've already testified about that --

14 Q Where are they?

15 A -- earlier with respect to the HS & E
16 files.

17 Q Well, you told me that some of them are in
18 the proprietary study files. Where else are they in
19 HS & E?

20 A As I said, in the information services
21 files. They could be in any other number of
22 locations as well.

23 Q Tell me what the information services files
24 are.

25 A I've already described that.

1 Q I haven't heard that word before. That's
2 why I think you described them without using that
3 term.

4 A Can you define "them" for me again, let me
5 make sure I understand what you are asking me?

6 Q The "them" are any information that Shell
7 has regarding allegations of the health hazards of
8 benzene. The "them" regards allegations regarding
9 the health hazards of benzene.

10 A Allegations?

11 Q Right.

12 A Now you are getting into -- are you talking
13 about lawsuits, too?

14 Q No. No. Studies, case reports, reports
15 made to Shell by doctors recommending --

16 A Those are the principal places I'm aware
17 of. There may be others.

18 Q In the study files and the information
19 services files?

20 A There may be and probably are hundreds of
21 other places, but I can't tell you what they are.

22 Q How are the information services files
23 arranged?

24 MR. MOORE: Do you know?

25 A Well, yeah. I've already answered that.

1 MR. SIMON:

2 Q Well, I haven't heard you use that phrase
3 before except about 10 seconds ago. So I need you
4 to tell me again.

5 A It's the same thing when I was talking
6 about the central files in HS & E that are
7 administered by Suzanne Funk.

8 Q And she has an index, but you haven't seen
9 it?

10 MR. MOORE: No, he didn't say that. He
11 didn't say she has an index that he hasn't seen.

12 A I don't recall ever seeing an index.

13 MR. SIMON:

14 Q You haven't seen an index?

15 A I don't recall an index.

16 Q Is it your view that she has an index?

17 MR. MOORE: If you want to -- he's answered
18 all the questions he can about what he knows on that
19 subject.

20 MR. SIMON: I believe we'll have to depose
21 Ms. Funk this afternoon.

22 Q The next one, No. 4, the identity of all
23 documents contained at any time in the recently
24 uncovered benzene binder referenced in the
25 deposition of John O. Tyler, are you the

1 witness that can speak to that?

2 A I can talk to you about the binder as of
3 and up to the time I left Shell.

4 Q Would you be able to look at the binder and
5 determine from looking at it whether its contents
6 now are the same as they were at the time you left
7 Shell?

8 A With respect to some documents.

9 Q So you have some idea what the documents
10 were that were in there?

11 A Sure.

12 Q The identity of all binders or sets of
13 binders in which all documents pertaining to health
14 hazards of benzene were maintained or stored at any
15 time by Shell. Are you the witness?

16 A With respect to the documents that were
17 stored in John Tyler's law office, yeah.

18 Q What floor are we on now?

19 A 48.

20 Q And that's where your office was when you
21 worked for Shell?

22 A That's correct.

23 Q And where's Tyler's office?

24 A It was on 49.

25 Q Not there anymore?

1 A No.

2 Q Where is it now?

3 A I don't know.

4 MR. COLLINS: He's moved buildings.

5 THE WITNESS: Couple of blocks away from
6 here, I think, but I don't know which building.

7 MR. SIMON:

8 Q And when you worked for Shell and Tyler had
9 an office on the 49th floor, you had a key to his
10 office, didn't you?

11 A I did.

12 Q And No. 6, the locations of all documents
13 segregated at any time by Shell from its files
14 pertaining to the health hazards of benzene were
15 stored, maintained or kept, are you the witness to
16 talk about that?

17 A With respect to the documents that were in
18 Mr. Tyler's office, yes.

19 Q What about the reason the segregated
20 documents were not revealed to the plaintiffs during
21 discovery? Are you the witness to talk about that?

22 A With respect to this case, I have no idea.

23 Q Do you know who the witness is going to be
24 on that subject?

25 MR. MOORE: Well, Mr. Collins -- you are

1 going to take Mr. Collins' deposition. Mr. Collins
2 is the lawyer who is familiar with that subject.

3 MR. SIMON: Okay.

4 Q The manner or method by which the documents
5 were gathered and segregated from Shell's files.
6 Are you the witness on that subject?

7 A With respect to the materials at Tyler's
8 office that were actually obtained from Shell's
9 files, the answer would be me.

10 Q The identity of all documents, including
11 indices, memoranda or lists which describe the
12 location and identity of all documents pertaining
13 to the health effects of benzene in Shell's files
14 at any time?

15 A Again, with respect to information I'm
16 aware of and with respect to the materials in
17 Tyler's files, yes. Or Tyler's offices.

18 MR. SIMON: Just let the record reflect
19 that both with regard to No. 7 and No. 9 that if
20 Mr. Collins is not prepared to talk about the way
21 the documents are organized downstairs and on what
22 indices they're available so as to make them
23 accessible, we're going to insist under our 30(b)(6)
24 motion -- notice that we depose the appropriate
25 witness, who may be this Funk person. But I think

1 that those need to be addressed before we go home.

2 Q No. 10. Where the segregated documents are
3 currently being stored.

4 A Not me.

5 MR. SIMON: Not you. Okay.

6 Mr. Collins, are you going to be the one on
7 No. 10, where they are currently being stored?

8 MR. MOORE: Where what is currently being
9 stored?

10 MR. SIMON: The segregated documents which
11 I understand --

12 MR. MOORE: Do you mean these 48 boxes?

13 MR. COLLINS: They will be shown to you.

14 MR. MOORE: Yeah.

15 MR. SIMON:

16 Q The identity of any and all additional
17 documents concerning the health hazards posed
18 by exposure to benzene-containing products beyond
19 those contained in the recently-uncovered benzene
20 binder.

21 A To my knowledge --

22 MR. MOORE: What is that one? Did you just
23 read No. 11?

24 MR. SIMON: I'm just going down the list.

25 MR. MOORE: But I'm just trying to figure

1 out where you are.

2 MR. SIMON: 11.

3 MR. MOORE: No. 11. Well, what do you mean
4 by additional documents?

5 MR. SIMON: Well, what we've been engaged
6 in here is about three years of a guessing game in
7 which nothing is produced and then we're told to
8 specify the documents and only under the most
9 untoward circumstances when some party other than
10 Shell gives me one of them --

11 MR. MOORE: But the only question I'm
12 asking you, Ron, is when you say any additional
13 documents, we have to deal with a particular
14 person. Do you mean documents in addition to those
15 48 -- those that are in those 48 boxes?

16 MR. SIMON: Yes.

17 MR. MOORE: That this witness may have
18 knowledge of as being segregated? Is that what you
19 are -- is that the question that you just asked?

20 MR. SIMON: No. The question is documents
21 in addition to the 48 which describe the health
22 hazards posed by benzene that are in Shell's file
23 that this witness is aware of.

24 MR. MOORE: Well, let me suggest to you
25 that the answer that you got to the interrogatories

1 initially propounded in this case and request for
2 production of documents initially propounded in this
3 case are still applicable. That is, we have
4 documents in the HS & E library department that you
5 were invited to go look at once before, are still
6 there. And that is the repository of documents of
7 this company relating to the hazards of benzene.

8 MR. SIMON: I appreciate that they are
9 still there and I appreciate that they were offered
10 earlier in the case. They weren't offered to me
11 last year. And I promise you that I will not
12 voluntarily leave this building without seeing
13 those documents today.

14 MR. MOORE: Okay. But I just want to
15 say, you know, that if you want to see them we
16 need to make some arrangements.

17 MR. COLLINS: No, we're gonna do more than
18 that. Can we have an adjournment?

19 MR. SIMON: Sure.

20 [Recess]

21 MR. SIMON: When we left off, we were
22 discussing making arrangements to see the documents
23 that are kept at HS & E. Do you want to address
24 that now?

25 MR. MOORE: Well, there's no way he can

1 address it. Let me just tell you what our position
2 is. Discovery, in essence, has been completed.
3 You've been allowed to reopen discovery for a
4 limited purpose as identified by the judge. One
5 of those purposes was not to take advantage of the
6 opportunity presented to you when discovery was
7 first filed, or when you were here before. So
8 what I want to -- that's all I can tell you.

9 MR. SIMON: What our view is, just so
10 you'll understand there's a record of it, because
11 we are going to insist on it --

12 MR. MOORE: I'm sorry. There's a record
13 what?

14 MR. SIMON: So that there is a record, I
15 want to speak on the record that for the purposes
16 of the 46 or 48 boxes, those are the ones that are
17 the subject matter of the dispute. And I understand
18 you are going to allow us to look at those, with
19 certain limitations that you'll discuss.

20 MR. MOORE: Yes.

21 MR. SIMON: With regard to going to
22 HS & E, where the 30(b)(6) witness has testified the
23 documents are, I understand it's going to be your
24 view and is your view that there hasn't been any
25 segregation or any improper segregation. And since

1 no indices of those have been brought forward nor
2 any witness who is familiar with the structure of
3 the files in HS & E, we want to depose the woman who
4 runs the files down there, as well as look, not for
5 the purposes of looking for other documents, but to
6 test that theory whether in fact they are down there
7 and what the index -- what their availability was.
8 I mean, that's the dispute. I don't want to fish
9 through your files. I want to see how readily they
10 are available if someone --

11 MR. MOORE: I understand. I understand.
12 Let's go ahead. This witness can't help us with
13 that. Let's go ahead.

14 MR. SIMON: Okay.

15 Q Now No. 11.

16 A Where did my --

17 Q I'm sorry. I don't believe I snatched it.

18 MR. MOORE: Here it is.

19 A Thank you.

20 MR. SIMON:

21 Q No. 11 says the identity of any and all
22 additional documents concerning the health hazards
23 posed by exposure to benzene-containing products
24 beyond those contained in the recently-uncovered
25 benzene binder.

1 MR. MOORE: I think we --

2 MR. SIMON: Let me just finish --

3 MR. MOORE: I think we discussed that and
4 then got into the conversation that you just went on
5 the record about.

6 MR. SIMON: Okay. Let me then pose
7 some questions about that just for purposes of
8 clarification.

9 Q Mr. Faulk, have you reviewed what we've so
10 far called the blue binder? And we're going to see
11 a copy. Have you reviewed the contents of that at
12 any time?

13 A Not since I left Shell.

14 Q Okay. Have you reviewed the contents of
15 the 46 or 48 boxes at any time?

16 A Yes.

17 Q Since you left Shell, you reviewed them?

18 A Yeah.

19 Q When did you review them?

20 A Monday. Let's go back. Review. I have
21 seen the binder itself, what you are talking about.
22 This binder. And I have flipped through it.
23 Insofar as studying it or making a special effort
24 to determine exactly what's in it, all that stuff,
25 I have not.

1 Q Did you make any effort to determine
2 whether anything was missing from it that was
3 there when you left Shell?

4 A I didn't observe if there was anything.

5 Q Did you make any effort to determine if
6 there was anything missing?

7 A Yes.

8 Q And what did you find out?

9 A There was nothing.

10 Q What about with regard to the 46 or 48
11 boxes?

12 A To my knowledge, they're exactly the same
13 as I left them.

14 Q How much time did you spend looking at
15 them?

16 A Several hours.

17 Q When did you do that?

18 A Monday.

19 Q Were you paid by Shell to do that?

20 A No.

21 Q Where did you review those boxes?

22 A In a room where they were stored.

23 Q In this building?

24 A No, it was in Two Shell Plaza.

25 Q Is that where they are now?

1 A I have no idea.

2 MR. COLLINS: No.

3 MR. SIMON: Did you say "no," Ray?

4 MR. COLLINS: No.

5 MR. SIMON: Mr. Collins.

6 Q Are you aware of any documents that were
7 in the Shell files, at the time of your employment,
8 that concerned the health hazards posed by exposure
9 to benzene products beyond those that are in the 46
10 to 48 boxes that were in Two Shell Plaza when you
11 saw them earlier this week?

12 A Certainly.

13 Q Which are those?

14 A There are thousands of them in the
15 Health, Safety & Environment files and presumably
16 in hundreds of other locations around the company.

17 Q Are you aware of any documents prior -- that
18 are dated prior to 1950 that indicate health hazards
19 posed by exposure to benzene-containing products
20 other than those in the 48 boxes that were in Shell
21 files at the time you left?

22 A No. I don't believe so, no.

23 Q Are you aware of any prior to 1960 that
24 are not in those boxes that deal with the benzene-
25 containing products?

1 A I don't know. I really can't answer that.

2 Q Why can't you answer that?

3 A I don't know.

4 Q I asked you if you were aware of them.

5 A I don't recall being aware of any.

6 Q I trust that you are the witness who will
7 testify about the identity of the document entitled
8 Benzene Litigation: Duties, Defenses and Strategies,
9 by Richard O. Faulk.

10 A That's correct.

11 Q Are you the witness who is going to testify
12 about the identity of the individuals who attended
13 the meeting that I believe you said it was April 6,
14 is that the right date, of '89?

15 A Yes.

16 Q Who was there from Shell?

17 A Mr. Ted Long, I believe some people from
18 toxicology, Gary Vangelder. I can't recall whether
19 there was one or two other people with him.

20 Q What's Ted Long? What was Ted Long's
21 position?

22 A He's an attorney for Shell Oil Company.

23 Q What division?

24 A At that time, he was in the chemical
25 section of the legal department.

1 Q Is that in the litigation division that you
2 described?

3 A No. That's a longer story.

4 Q Why don't you tell me about it?

5 A I knew I shouldn't have said that. At the
6 time that this was taken, there was no litigation
7 division for Shell. Originally there was, but at
8 the time this was going on, the litigation division
9 was dissolved pursuant to a reorganization and
10 certain litigators had been assigned to the business
11 chemical department as well as other departments in
12 the legal department.

13 Q So was Mr. Long at that time involved in
14 the defense of benzene leukemia cases?

15 A I presume. I believe he was managing some.

16 Q Do you know which cases he was managing?

17 A No.

18 Q Was Mr. Collins at that meeting?

19 A No.

20 Q Was he invited to the meeting?

21 A Not by me.

22 Q Was he invited by anybody else?

23 A I don't know.

24 Q Did you, on April 6, 1989, know which
25 attorneys in the Shell -- Shell Oil Company's legal

1 department were involved in the defense of benzene
2 litigation, benzene leukemia cases?

3 A By rumor, some, not all.

4 Q Who did you know who was involved in
5 benzene litigation?

6 A I had mentioned, I think, Mr. Aurelius was
7 managing some. He was in a different department.
8 Mr. Long. And I think that's -- that may be all
9 that I was aware of.

10 Q Did you coordinate your efforts with the
11 other attorneys in any way who were defending
12 benzene leukemia cases?

13 A No.

14 Q Did you know Mr. Collins on April 6, 1989?

15 A Yes.

16 Q Did you know whether he was involved in any
17 benzene leukemia cases at that time?

18 A No.

19 Q Did you ever come to learn he was involved
20 in benzene litigation cases?

21 A Only by virtue of this exercise we're going
22 through.

23 Q When did you first find out that he was
24 involved in this case?

25 A Sometime last year.

1 Q When last year?

2 A I don't know. Sometime before I went to
3 work for Akin Gump.

4 Q How is it that you came to find out in that
5 time you were working for Strong Pipkin, which was
6 in the early to mid part of last year, that
7 Mr. Collins was working on this case?

8 A I don't remember how I learned it.

9 Q Do I understand you to say that you found
10 out about Collins working on the case not while you
11 were at Shell but while you were at Strong Pipkin?

12 A Uh-huh, that's correct.

13 Q Did you ever discuss the case with Collins?

14 A No. Well, I mean, other than the exercise
15 we're going through here.

16 Q When did this exercise we're going through
17 here start?

18 A As far as I was concerned?

19 Q Yes.

20 A When I learned there was a discovery
21 dispute.

22 Q When did you learn that?

23 A I think I testified within the last month
24 or so.

25 Q Do you know who it was that told you that

1 Collins was involved in this case?

2 A No, I don't remember.

3 Q Do you know if any other attorney was
4 responsible for this case at the time of the April
5 6, 1989, meeting?

6 A No.

7 Q How is it -- I just need to understand.
8 How is it that you conducted a meeting to discuss
9 the defense of benzene leukemia cases in 1989, while
10 you were a full-time employee of Shell in the legal
11 department, and you didn't make any determination to
12 find what other attorneys here were doing that so as
13 to invite them to the seminar?

14 A How is it?

15 Q Yeah. I don't understand. It seems to me
16 that you -- it would be an obvious thing to do. Your
17 associates that work on the same floor have the same
18 task and you invite lawyers from other companies but
19 don't invite people from your own company. Why is
20 it that you did that?

21 A There were a limited number of seats. And
22 I invited Ted because he had expressed interest in
23 it.

24 Q You didn't make any determination as to who
25 else was doing this kind of work?

1 A I told you I surmised other people were,
2 but I wasn't sure.

3 Q But you didn't make any effort to determine
4 who they were at that time?

5 A I didn't make a special effort, no.

6 Q Did you make any effort, in the process
7 of preparing the materials for the seminar and the
8 seminar, to make sure that the other attorneys in
9 Shell's legal department who were working on benzene
10 leukemia cases would get the benefit of the seminar
11 in terms of its materials or teaching?

12 A I'm not sure I understand your question.

13 Q Well, you taught a -- you participated
14 in teaching a seminar about how to defend benzene
15 leukemia cases. And I believe you've testified that
16 you didn't go out of your way or make any effort to
17 find out who else working at Shell with you were
18 defending these cases so as to invite them.

19 Now I'm asking you the next step. Did you
20 go, either at or during the seminar, and contact one
21 of your superiors and say, "I think you ought to
22 distribute the materials to everybody who is in
23 the Shell legal department doing this kind of legal
24 work"?

25 MR. MOORE: I'm sorry. The question is

1 what, Ron?

2 MR. SIMON: I'm trying to figure out how
3 it would be that Mr. Faulk taught a seminar about
4 benzene leukemia cases that he was working on on
5 behalf of Shell, there's other attorneys that work
6 on the same floor where we sit now, working on the
7 same kind of cases, and he never thought to invite
8 them to the seminar or to even get them the
9 information.

10 MR. MOORE: Well, can you tell me what the
11 question is?

12 MR. SIMON: The question is:

13 Q Did you make any effort to get them the
14 information outside of inviting them to the seminar?

15 A Not that I recall.

16 Q Did you ever offer to hold a seminar for
17 the Shell lawyers who were defending benzene
18 leukemia cases?

19 MR. MOORE: The reason for -- this is the
20 same issue that we discussed before. Many of the
21 same issues that were discussed here at this seminar
22 had been -- he -- just in the course of handling
23 these matters, he was in conversation with other
24 Shell lawyers who were interested in and
25 participating in the defense of these cases.

1 And that's privileged material.

2 A Not outside the context of privileged
3 attorney-client communications.

4 MR. SIMON:

5 Q But you've already, I think, testified
6 that -- I asked you whether you knew Mr. Collins
7 was working on these cases, and you said no. Is
8 that right?

9 A That's true.

10 Q And I asked you whether you knew of any
11 other attorney that was working on them before
12 Collins, and you said no. Isn't that right?

13 A That's true.

14 Q I want to know if you made any other
15 effort -- I'm trying to understand how it could be
16 that Mr. Collins is a lawyer on the same floor that
17 you are on with an almost identical task of
18 defending benzene leukemia cases that you are
19 holding seminars about and you didn't make any
20 effort to --

21 MR. MOORE: Ron, Ron, I think one of -- one
22 of the premises that you are basing your question on
23 was not correct.

24 MR. SIMON: What's that?

25 MR. MOORE: They didn't have identical

1 tasks. And that goes to the distinction of lead
2 lawyer and managing lawyer. And that may be a
3 source of some confusion.

4 MR. SIMON: Well, I stand corrected on
5 that.

6 Q You had other lawyers on this floor who
7 were involved in the defense of benzene leukemia
8 cases. How did it come that you didn't make any
9 effort to inform them of the materials that you
10 were producing in your seminar?

11 MR. MOORE: Are you asking him why didn't
12 he inform every lawyer working for Shell? Or why
13 didn't he make an inquiry as to who were the group
14 that were handling benzene cases?

15 MR. SIMON: The latter.

16 MR. MOORE: I mean, because -- okay.

17 MR. SIMON:

18 Q Why didn't you make that inquiry?

19 A I was a trial lawyer for the company. Ted
20 was a managing litigation lawyer, as well as doing
21 other legal tasks for the company. I don't recall
22 that I had a thought process other than I thought
23 inviting Ted was enough to have him -- if he needed
24 to tell anybody, he could tell the people that did
25 the job like he did.

1 Q Did you suggest to Ted that this material
2 ought to be given to the other lawyers?

3 A Never made any such suggestion.
4 Let's take a break for a minute.
5 MR. SIMON: Sure.

6 [Recess]

7 MR. SIMON: Let's mark this one.

8 [Exhibit 6 marked]

9 MR. SIMON:.

10 Q Do you want to identify this one for me?

11 A Okay.

12 Q Identify it, please.

13 A That's a copy of the presentation outline,
14 actually, viewgraphs, copies of the viewgraphs that
15 were given at the presentation at Tyler's office.

16 Q And where are the viewgraphs now?

17 A I have no idea.

18 Q Were those prepared here at Shell?

19 A Yeah, I think so.

20 Q So Shell paid for the materials in the
21 viewgraphs?

22 A I don't know.

23 Q You didn't pay for them personally, did
24 you?

25 A I didn't pay for them, no.

1 Q All right.

2 With regard to this document we've marked
3 as Deposition Exhibit 6, are you aware -- putting
4 aside this litigation, meaning the activities that
5 occurred in this litigation since January 1 of 1991,
6 which I'll just mark as sort of the discovery
7 disputes from my standpoint, are you aware of any
8 employees at Shell who got copies of Exhibit 6?

9 A Other than Ted, who may have attended the
10 meeting. He's the only one I can think of who would
11 have.

12 Q To your knowledge, it wasn't distributed to
13 Shell's legal staff?

14 A No.

15 Q Was it distributed to everybody at the
16 seminar?

17 A It was available.

18 Q Could you make -- explain to me the
19 distinction between available and --

20 A Stack of copies. People could pick them up
21 if they wanted.

22 Q Are you the witness to testify to No. 14,
23 the identity of all correspondence, memoranda,
24 reports by or to Mr. Faulk pertaining to the
25 segregation of the documents, why they were

1 segregated and/or where they were stored?

2 A Yeah.

3 Q Why don't you tell me about your
4 relationship with Mr. Tyler? Did you hire
5 Mr. Tyler?

6 A No.

7 Q Who hired Mr. Tyler to do the work in the
8 Skeen -- reviewing the Skeen case?

9 A Shell Oil Company did.

10 Q Who chose him?

11 A I presume the decision was made by
12 James Evans, the assistant general counsel.

13 Q Did you have any input in that decision?

14 A I attended Mr. Tyler's presentation.

15 Q Which presentation was that?

16 A A presentation he gave to demonstrate the
17 abilities of his firm to assist us.

18 Q And when did he make that presentation?

19 A Sometime in 1987.

20 Q What do you remember about the
21 presentation?

22 A It was a luncheon presentation, John
23 distributed some sample materials, played an example
24 of a videotape that he had done in an injury case to
25 give us an idea of what they had done.

1 Q Did you make any statements to Mr. Evans
2 or anyone either recommending or not recommending
3 Mr. Tyler?

4 A I told him I thought John would do a good
5 job for the role we were looking for.

6 Q What role was it that you were looking for?

7 A A supporting role for me.

8 Q When you say supporting, what did you need
9 done?

10 A Well, I -- given the what we expected to be
11 a large volume of work in the numerous cases at Deer
12 Park, we felt like our in-house resources insofar as
13 just bodies that we could devote to it to defend the
14 cases were inadequate.

15 And so John's firm was hired on, after
16 interviewing other firms as well, and -- to help,
17 to provide resources when we needed them.

18 Q But you were going to be the lead lawyer in
19 the cases?

20 A That is true.

21 Q You were going to try the cases?

22 A Yes.

23 Q Was there anything particular about his
24 presentation or his qualifications that led you to
25 recommend him?

1 A I just felt like he could do a good job in
2 a supporting role.

3 Q What were his particular traits that you
4 thought would make him do a good job in a supporting
5 role?

6 A Well --

7 MR. MOORE: What's that got to do with
8 anything?

9 THE WITNESS: Traits he had?

10 MR. SIMON:

11 Q Yeah.

12 A I suppose the experience that he expressed
13 to me, the -- his enthusiasm for the work. I think
14 his enthusiasm for the work was the most important
15 thing to me.

16 Q Did, to your knowledge, Mr. Tyler ever come
17 to know about the Soley document?

18 A I believe so.

19 Q When did he come to know about it?

20 A At some point we discussed it. I can't
21 remember exactly when.

22 Q Well, what do you remember about it?
23 How did it come up?

24 A We were talking --

25 MR. MOORE: Excuse me. You say: How

1 did it come up? If it came up in the context of
2 preparation for litigation or in anticipation of
3 litigation, then it's not a permissible area of
4 inquiry.

5 THE WITNESS: That's exactly how it came
6 up.

7 MR. SIMON: I'm going to state again, and
8 we're going to mark the transcript, because I
9 reviewed my files, that the attorney work product
10 is an explicit exception to the -- let's state it
11 properly. Inquiries into improper conduct is an
12 explicit exception to the attorney work product.
13 And that's precisely what we're here for. Whether
14 this segregation was proper or not. And the fact
15 that the judge has specifically --

16 [THE TRANSCRIPT WAS MARKED]

17 MR. MOORE: Well --

18 MR. SIMON: Let me just finish my
19 statement, then I'll let you -- I won't interrupt
20 you, or I'll try not to.

21 And the fact the judge has specifically
22 authorized us to depose Mr. Faulk and Mr. Collins
23 with regard to the issue of the segregation suggests
24 very strongly to me, and I heed you that these are
25 appropriate questions and we're just going to be

1 back down here if we don't get some answers. This
2 is what we're here to find out about, how these
3 documents came to be never disclosed to the
4 plaintiffs. That's what we're here for.

5 MR. MOORE: Well --

6 THE WITNESS: Let me say this. The
7 existence of the document was disclosed to Mr. Tyler
8 in the context of privileged attorney-client
9 communication between he and I.

10 MR. SIMON:

11 Q With regard to what case was that?

12 A With regard to all the cases he was working
13 on.

14 Q Were there any cases besides the Deer Park
15 cases?

16 A No.

17 Q And it was never disclosed to the plaintiff
18 in the Deer Park cases, was it?

19 A I think I've already answered that.

20 Q And the answer was no?

21 A I believe that's what I said.

22 Q Okay.

23 Now, what's your best recollection of when
24 Tyler made his presentation trying to get the work?
25 I wrote down 1987. Do you have any better

1 recollection than that?

2 A Not really. It was shortly after the cases
3 had been filed.

4 Q After the Deer Park cases had been filed?

5 A Whenever that was.

6 Q Now, how did the -- help me understand how
7 the -- it seems that I know of two tasks that Tyler
8 did for Shell:

9 One was defend the Deer Park cases or
10 support you in the defense of the Deer Park cases

11 And 2 was his review of the Skeen trial,
12 second Skeen trial.

13 How did those two tasks relate?

14 A They were actually part of the same
15 task. The same attorney, plaintiff's attorney, was
16 involved in the Skeen trial, and the same issues
17 were involved in the Skeen trial. It was the same
18 type of case. And so a decision was made that we
19 should study it and observe it and learn as much as
20 we can about it, because we would probably or at
21 least expected to face the same issues and
22 situations.

23 Q Now I'm confused. I thought that my
24 reading of your memo said that O'Quinn was the
25 plaintiff's lawyer in the Skeen cases.

1 A That's correct.

2 Q You didn't identify O'Quinn as
3 the plaintiff's lawyer --

4 A Mr. Leach was associated with his office.
5 But Mr. O'Quinn did not work on the cases.

6 Q On the Deer Park cases?

7 A That's correct.

8 Q And so that your best recollection -- I'm
9 just repeating myself, forgive me -- is that he made
10 the presentation in '87 and at that time you were
11 looking for an attorney to work with you on the
12 Deer Park cases which had been filed.

13 A That's correct.

14 Q And when was it that you came to make him
15 aware of the Soley document?

16 MR. MOORE: Excuse me. We've objected to
17 that. If you want to get into the reasons for the
18 "segregation," you're entitled to do that, but
19 you're not doing that right now, Ron.

20 MR. SIMON: I believe it's the same
21 question. I think we're fighting about semantics.

22 MR. MOORE: Okay. Well, if we are, I
23 apologize. But when I hear you asking him about
24 segregation, then I know we're on the right track.
25 Or at least I'm on the right track.

1 MR. SIMON: Well, when I asked him
2 segregation, he told me it was not the right word,
3 as I remember, this morning. So I'm trying to ask
4 him about the documents. I'm avoiding "segregation"
5 because I thought you didn't like it.

6 MR. MOORE: All right. I'm just trying to
7 understand. Continue.

8 MR. SIMON:

9 Q Tell me when you told him about the Soley
10 document.

11 A I don't remember.

12 MR. MOORE: I object to that, because
13 that's -- that goes into what he told him, when
14 he told him and the context.

15 MR. SIMON: No, I --

16 MR. MOORE: The fact that he told him
17 about it in the context of litigation, we say, or in
18 anticipation of it, it's part of his work product in
19 preparation for the trial of that case or those
20 cases.

21 MR. SIMON: Maybe you could conduct the
22 examination for me. He only worked for him with
23 regard to one project. That was the project in
24 which he found out about all these documents you
25 tell me I can't ask about. Maybe you could tell me

1 how you want me to ask these questions.

2 MR. MOORE: I didn't understand it that
3 way. But ask the questions the best you can, and I
4 will object if I think that that needs to be done.

5 MR. SIMON:

6 Q When did you become aware of the Soley --

7 MR. MOORE: I've already objected to that,
8 because I think that his answer by necessity
9 includes discussions between lawyers involved in the
10 project of defending a lawsuit that, as I understand
11 it, is still pending.

12 MR. MOORE: I didn't ask him anything about
13 his discussions, I asked him when --

14 MR. MOORE: You said when.

15 MR. SIMON: He's already told us that he
16 told him. I'm just asking for the date. That's not
17 going to give his thought processes.

18 MR. MOORE: Well, why don't you go ahead.

19 A I'm obliged not to answer on the advice of
20 counsel. I'm sorry.

21 MR. MOORE: Why don't you go ahead and ask
22 him about the issue of segregation as you understand
23 it and let's go from there?

24 MR. SIMON:

25 Q I understand that you are saying that

1 counsel from Roanoke is your counsel even though
2 you're no longer a Shell employee?

3 MR. MOORE: No, no, no. We established
4 earlier that he doesn't have counsel, and that when
5 Shell asserts a privilege that the witness has no
6 discretion about the matter at all. When his client
7 asserts a privilege, he has to go along with it.

8 MR. SIMON:

9 Q Mr. Faulk, as you sit here today, have you
10 reviewed the law concerning the attorney work
11 product?

12 A In what context?

13 Q In the context of your being here today.
14 Have you reviewed it in preparation for your being
15 here?

16 A I have not.

17 Q Have you consulted counsel with regard to
18 that subject?

19 A I have not.

20 Q Have you reviewed the law with regard to
21 the attorney-client privilege in preparation for
22 your coming here today?

23 A I have not. Not outside my normal training
24 and experience over my 15 years of practice.

25 Q Have you consulted counsel with regard to

1 that subject?

2 A What subject?

3 Q The subject of the attorney-client
4 privilege.

5 A I think I answered that.

6 Q Okay.

7 Have you reviewed the Code of Professional
8 Responsibility as it applies to whether an attorney
9 in a firm which represents a client can also be a
10 witness in a case, in preparation for this
11 deposition today?

12 A I have not.

13 Q Have you ever looked at those provisions?

14 A I have occasionally.

15 Q What provisions are they? Can you tell
16 me?

17 MR. MOORE: Well, what's the point of
18 this? Are you saying that he is acting unethically
19 because he is appearing as a witness?

20 MR. SIMON: I'm saying there's a potential
21 conflict of interest that bars the representation of
22 his firm --

23 MR. MOORE: Well, if you think that there
24 is, then you should file a motion to disqualify Akin
25 Gump.

1 MR. SIMON: I intend to. I'm setting a
2 predicate for that right now.

3 MR. MOORE: No predicate involved. He's
4 employed by Akin Gump, it's on the record. Akin
5 Gump is counsel for Shell among others in this
6 case. If you think his testimony today is grounds
7 for disqualification, then file the motion.

8 MR. SIMON: It may be.

9 MR. MOORE: But don't argue with this
10 witness about it.

11 MR. SIMON: I'm not arguing with him.

12 MR. MOORE: He can't argue with that.

13 MR. SIMON: The man has said he has come
14 here without counsel, he is an attorney, he has not
15 reviewed those --

16 MR. MOORE: All right.

17 MR. SIMON: Wait. Just let me finish,
18 please, and I'll allow you. He has not reviewed
19 those sections of the Code of Professional
20 Responsibility that concern attorney work product
21 nor the law that pertains to it nor attorney-client
22 privilege. The law is extraordinarily clear that
23 those privileges do not apply when the concern is
24 whether there has been misconduct. He's an
25 attorney. And you are objecting. You are not his

1 attorney. He doesn't have an attorney and he has
2 told me he has not looked at the law. And I need
3 to establish that.

4 MR. MOORE: All right. You've established
5 it.

6 A You haven't established that he's not my
7 counsel for purposes of being a 30(b)(6)
8 representative, which he is.

9 MR. SIMON:

10 Q So you are a 30(b)(6) representative of
11 Shell today?

12 MR. MOORE: Yes. We established that at
13 9:00 this morning.

14 MR. SIMON:

15 Q And you are also a member of the firm that
16 defends Shell, is that correct?

17 A No.

18 Q In this case? You're an employee of that
19 firm?

20 A I am.

21 Q And you're an attorney employee of that
22 firm?

23 A I am. In the Houston office.

24 Q Was there anybody from Akin Gump at the
25 meeting on April 6th?

1 A No.

2 Q Did you make anyone from Akin Gump aware of
3 the Soley document at any time?

4 A No.

5 Q Never?

6 A No.

7 MR. HOBSON: That's a double negative.

8 MR. SIMON:

9 Q Am I correct in my understanding that
10 you never made anybody at Akin Gump aware of the
11 existence of the Soley document?

12 A Well, not before the emergence of the
13 document in the context of this discovery dispute.

14 Q Did you make anybody at Akin Gump aware of
15 the fact that you had collected these 46 to 48 boxes
16 that we're going to inquire into?

17 A No.

18 Q Did you make anybody at Akin Gump aware
19 that you had put certain documents into plastic
20 binders that concerned benzene leukemia?

21 A No. Again, not before the emergence of
22 this discovery dispute.

23 Q When you left Shell, did you take copies
24 of any of the documents in those 46 to 48 boxes with
25 you?

1 A No.

2 Q Did you take any copies of --

3 A Well, let's strike that. Certain forms
4 I may have taken, such as interrogatory forms and
5 things like that.

6 Q Did you take copies of the Soley document?

7 A No.

8 Q Did you take with you any of your
9 correspondence files that you generated while
10 you were with Shell?

11 A No.

12 Q Going to what we've labeled now as
13 Deposition Exhibit 6, could you tell me when
14 you wrote that?

15 A Sometime probably in late March, early
16 April of -- was it 1988?

17 MR. MOORE: '89.

18 A '89. I'm sorry.

19 MR. MOORE: Is when the seminar was given.

20 A Sometime prior to the seminar.

21 MR. SIMON:

22 Q Did you write it on your own time or here
23 in the office?

24 A On my own time.

25 Q Did you write it at home or in the office?

1 A At home.

2 Q You typed it?

3 A I think I brought it up on a disk from my
4 home, my computer at home, and my secretary ran it
5 off.

6 Q And were there Xerox copies of it made?
7 Were there Xerox copies of it made?

8 A Ultimately, yes.

9 Q And did you make those or did Shell make
10 them?

11 A I think Mr. Tyler's office made them.

12 Q Now, how is it -- why don't you tell me
13 how it is that you came -- what was the purpose of
14 writing this document?

15 A A number of people that we had talked to
16 and that I had talked to specifically had expressed
17 an interest in what I had learned through my
18 experience in working on benzene cases. And
19 this was an effort to share what information
20 and experience and ideas I had.

21 Q Who were the people that were interested
22 in your information?

23 A I've named them. They were the invitees.

24 Q But you didn't feel any need to share them
25 with the lawyers on Shell's legal staff other than

1 Mr. Long?

2 A No.

3 Q How many copies of it were made and handed
4 out at that meeting?

5 A I don't have any idea.

6 Q How many people were at the meeting?

7 A I'm not really sure. 15, maybe 20. Maybe
8 less than that. I don't know.

9 Q Can you name any of the others that were
10 there besides -- you named the ones that you invited
11 from a number of oil companies. We named Wong and
12 Irons. Anybody else that you can remember that was
13 there?

14 A There may have been some representatives
15 from Eastman Kodak. And I can't recall whether
16 there was anyone there from Upjohn or not. There
17 was some question about whether someone would
18 attend. I don't recall whether they came or not.

19 Q Eastman Kodak was a client of Mr. Tyler's?

20 A That was my understanding.

21 Q So from Mr. Tyler's standpoint, as you
22 understood it, this was kind of a marketing meeting
23 for him to get some more clients?

24 A He may have viewed it that way. I
25 certainly didn't view it that way.

1 Q Did you notice any documents that suggested
2 it that way?

3 A No.

4 Q Was Conoco there?

5 A No.

6 Q Phillips?

7 A No.

8 Q Anyone from Occidental there?

9 A No.

10 Q Are you familiar with this -- was this
11 Page 23 handed out with Tyler's bio?

12 A I don't remember.

13 Q You don't remember?

14 A No.

15 Q Is this sentence that we read here,
16 "Mr. Tyler seeks to expand his client list in toxic
17 tort and exposure cases," any reason to think that
18 wasn't in the handout?

19 A I don't know.

20 Q Doesn't seem inconsistent with what
21 Mr. Tyler was doing at the meeting?

22 A Mr. Tyler was sharing information. If he
23 got business as a result of that, there's nothing
24 illegitimate about that.

25 Q Now tell me why it was that you wrote this

1 document.

2 MR. MOORE: Asked and answered.

3 A I'm not going to repeat myself.

4 MR. SIMON:

5 Q To share information?

6 A That's what I said.

7 Q Now, I think it says here in Exhibit 6, on
8 Page 23, I'll just show it to you to make sure I'm
9 not misleading you, "Mr. Tyler is currently
10 preparing a leading article on this subject with" ---

11 MR. MOORE: Excuse me. That's Exhibit 4.

12 MR. SIMON: Thank you. Now we'll have a
13 clear record.

14 Q "Mr. Tyler is currently preparing a leading
15 article on this subject with Mr. Richard O. Faulk."
16 Is that true?

17 A Yeah.

18 Q Did you do that?

19 A No.

20 Q Why not?

21 A It was just never finished.

22 Q Is there a draft of it?

23 A I don't know. I don't have it.

24 Q Did you work on it?

25 A Yeah, a little bit.

1 Q Did you work on it at home or here at
2 Shell?

3 A At home.

4 Q Your testimony with regard to No. 4 -- 6, as
5 I understand it, is that you wrote this at home. Is
6 that right?

7 A Yes.

8 Q What kind of computer do you have at home?

9 A An IBM clone.

10 Q Is that the kind of computers they have
11 here?

12 A Yes.

13 Q Did you print it at home or just bring your
14 disk in?

15 A I think I brought the disk in.

16 Q Do you have a printer at home?

17 A Yeah.

18 Q But you never printed it out at home?

19 A No, it was a dot matrix.

20 Q Now, let's go down No. 6. And forgive me,
21 I don't have another copy with me. Says, "Benzene
22 Litigation: Duties." What do you mean by that?
23 Whose duties?

24 A I believe the paper is pretty self-
25 explanatory. Duties of the manufacturers of

1 products suppliers.

2 Q And that's your -- your review was to
3 the legal duties of the suppliers of the product?
4 That's what you mean by that?

5 A Yeah.

6 Q What about strategies? What do you mean by
7 that?

8 A Strategies used or contemplated or --
9 in the defense of cases against suppliers or
10 manufacturers.

11 Q Let's go to the bottom here. You stated:
12 "The opinions expressed herein are soley those of
13 the author and do not necessarily represent the
14 views of Shell Oil Company."

15 A That's right.

16 Q Were those your words?

17 A Yes.

18 Q Did you run this by anybody at Shell who
19 asked you to write that on there?

20 MR. MOORE: I thought that was the -- the
21 judge said that was prohibited.

22 MR. SIMON: I think it was prohibited as
23 to who he ran it by. And I'm only asking him a very
24 limited question now. The limited question was
25 whether this suggestion of this "not necessarily"

1 language came from someone here at Shell.

2 MR. MOORE: Well, he said that it was his
3 language. And the judge said you may not inquire of
4 what the witness -- what discussion the witness had
5 with people at Shell about the preparation of the
6 document or the dissemination of it or anything
7 else. So I don't see how you can ask the question
8 you just asked.

9 MR. SIMON: I don't think the judge --

10 MR. MOORE: Well, I object to it. And
11 maybe -- my objection is based on what I understand
12 the judge ruled.

13 MR. SIMON: The judge ruled that in terms
14 of the approval process that he went through, who he
15 got approval from, what kind of approval, that's
16 what he ruled. He did not rule --

17 MR. MOORE: The information I have is that
18 the judge ruled that the witness may not be deposed
19 about any private conversations with Shell Oil
20 Company, such as discussions about approval of the
21 document-production strategy with Shell colleagues
22 or superiors.

23 Now, I understand the question you just
24 asked to be exactly in the prohibited area. I
25 therefore object.

1 MR. SIMON: Let's go off the record for a
2 second.

3 [Discussion off the record]

4 [Recess]

5 MR. SIMON: Back on the record.

6 Q Let me see if I then understand what it
7 is that your words mean. Your words mean here, the
8 opinions herein are solely those of the author, that
9 this entire product does not represent the opinions
10 of Shell?

11 A That's entirely correct.

12 Q And this is not Shell's view of its duties?

13 A I have no idea what Shell's view of its
14 duties are.

15 Q It's not Shell's idea of its defenses?

16 A It may or may not be. I don't know.

17 Q This is not Shell's idea of its strategies?

18 A No.

19 Q This is purely your personal view of what
20 the duties of the companies are, and the strategies --

21 A That is correct.

22 Q -- could or should be?

23 A That is correct.

24 Q Did you in any way rely on this document in
25 the performance of your duties at Shell?

1 A No.

2 MR. MOORE: I object. And I object because
3 it deals with his impressions and thought processes
4 while acting as a lawyer for Shell in the conduct of
5 litigation. And that is privileged.

6 MR. SIMON: Would you read back his
7 comments?

8 [The record was read as requested]

9 MR. SIMON:

10 Q Does this document, sir, represent your
11 impressions or thought processes while acting as
12 a lawyer for Shell in benzene cases?

13 MR. MOORE: I object to that. You can't
14 ask him what his thought processes were while acting
15 as an attorney for Shell.

16 MR. HOBSON: That wasn't the question.

17 MR. MOORE: He said: Does the document
18 represent that? Isn't that the same thing?

19 MR. HOBSON: No.

20 MR. MOORE: Well, I think it's the same
21 thing.

22 MR. SIMON: We're having a terrible problem
23 here because you sit here all morning and say
24 there's a privilege, then he writes something and
25 says it's his own personal point of view, and then

1 when I ask him about it, no, it's Shell's
2 activities. Which is it?

3 MR. MOORE: He's never said it was Shell's
4 activities.

5 MR. PICKLE: We're not getting anywhere
6 arguing all this stuff on the record. The decision
7 isn't going to be made in this room. You've made
8 your objection. If you want to mark it and take it
9 up with the judge, let's take it up and go on.

10 MR. SIMON: We'll mark it. That's a good
11 idea.

12 [THE TRANSCRIPT WAS MARKED]

13 MR. SIMON:

14 Q Does this document marked as Exhibit 6
15 reflect your impressions or thought processes while
16 acting as an attorney for Shell Oil Company?

17 MR. MOORE: And I object and assert the
18 privilege, because you are asking him to identify
19 material to which you are not entitled to an
20 answer.

21 MR. HOBSON: We need the witness's
22 response.

23 MR. MOORE: You may not get the witness's
24 response.

25 MR. HOBSON: Well, I mean that he's not

1 going to answer.

2 MR. MOORE: Well, I object and ask him not
3 to answer.

4 A I accede to counsel's request.

5 MR. SIMON:

6 Q Let's go to Page 18.

7 A 18?

8 Q Yes, sir.

9 MR. PICKLE: This is still Exhibit 6, Ron?

10 MR. SIMON: Yes.

11 A Okay.

12 MR. SIMON:

13 Q The top line says "Industry Response: A
14 Comprehensive Strategy." Could you tell me what
15 that means?

16 A As I expressed, it was a response that was
17 suggested or that I suggested that could be used, if
18 followed comprehensively, to defend benzene cases.

19 Q So this is your personal suggestion to the
20 industry about a strategy?

21 A This is some ideas that I had.

22 Q This doesn't reflect the point of view of
23 Shell Oil Company?

24 A No.

25 Q Now --

1 A Not that I'm aware of. It certainly does
2 not with respect to many of these.

3 Q Which ones do you know that it doesn't?

4 MR. MOORE: I object. You are asking him
5 now to tell what the defense strategy is for Shell
6 Oil Company about matters that are in litigation.
7 And if that isn't -- I mean, I object.

8 MR. SIMON:

9 Q When you say a "comprehensive strategy,"
10 what do you mean by comprehensive?

11 A A strategy that could be employed as a
12 skeletal guideline, perhaps uniformly looked at
13 on a case-by-case basis.

14 Q One of the things that I'm not -- I'm going
15 to try to do is -- did you mean comprehensive
16 meaning strategy:

17 A sort of soup-to-nuts strategy for a
18 single case? Or did you mean comprehensive that it
19 would be handled -- that's Option 1, soup-to-nuts on
20 a single case.

21 Or Option 2, used by a single defendant in
22 a number of cases?

23 Or Option 3, used by a number of
24 defendants?

25 Or Option 4, necessarily -- and that's

1 what -- used by all the defendants in a case?

2 A I think Options 1 and 2, correct.

3 Q Okay. You don't mean by comprehensive that
4 it's sort of exclusive that all the defendants have
5 to pursue it together? That wasn't your suggestion?

6 A No.

7 Q You say coordinate all discovery requests.
8 What do you mean by that?

9 A Make sure you have a handle on the
10 discovery requests that come in against your
11 company.

12 Q Well, if you are saying that it's a
13 strategy for how you defend a single case, who
14 are you coordinating with?

15 A Presumably you are going to coordinate with
16 people in the company that are handling the cases.

17 Q So your suggestion was that all the people
18 who are handling, say, cases about fish all
19 coordinate together in their discovery?

20 A I think that's a fair estimate of what I
21 was saying.

22 Q Now let me go back to my earlier question.
23 If this on Page 18 was the recommendation that you
24 made, is this what you believed?

25 A I thought it was a good idea.

1 Q Did you recommend that to your superiors?

2 MR. MOORE: I object.

3 MR. SIMON:

4 Q I'd like to find out why it is if you
5 recommended coordination on Page 18 and wrote it up
6 and put it on a slide overhead projector that you
7 didn't make any efforts to make sure that the other
8 attorneys working with you knew that that was your
9 suggestion.

10 MR. MOORE: Well, excuse me. You say
11 "other attorneys working with you." That implies
12 that he knew what they were working on.

13 MR. SIMON: I stand corrected.

14 Q That you didn't make an effort to find out
15 who else for Shell was working on benzene leukemias
16 and coordinate.

17 MR. MOORE: That's been asked and answered
18 several times.

19 MR. SIMON: Now I'm moving again.

20 MR. MOORE: I understand. But I don't see
21 how it's any different --

22 MR. SIMON: Before, I asked him based on
23 my view of common sense that maybe it would be a
24 reasonable thing to do. Now I'm reading on Page 18
25 that he thought it was a reasonable thing to do, so

1 I'm asking him again: Since you in your own words
2 thought it was a reasonable thing to do, why it was
3 that you didn't recommend -- try to go ahead and do
4 it or even recommend it.

5 MR. MOORE: Even though you prefaced each
6 question differently, it's still the same question,
7 and I object because it's been asked and answered.

8 MR. SIMON:

9 Q What did you want to answer? It's not
10 privileged. You can answer that.

11 MR. MOORE: You can answer. It's been
12 asked and answered --

13 A I never testified that I didn't recommend
14 it.

15 MR. SIMON: Okay.

16 Q Did you recommend it?

17 MR. COLLINS: Objection.

18 MR. MOORE: Well, now --

19 MR. COLLINS: Objection.

20 MR. MOORE: Objection in terms of who he
21 talked to at Shell or what he was doing with fellow
22 attorneys here with reference to defense effort.

23 MR. SIMON: I believe that we have a
24 problem here, because he has already testified --
25 though occasionally you object and occasionally you

1 don't, he has already testified that he didn't make
2 any effort to find out who had benzene leukemia
3 cases and he didn't give them these documents. Now
4 I say: Did you recommend it? Why did you recommend
5 it? And he says: I didn't testify I didn't
6 recommend it. Now, which is it? We're having a
7 conflict in testimony, and I think it's interesting
8 the way the -- I'm going to go outside.

9 MR. MOORE: The question you asked before,
10 which was not objected to, was: Who was invited?
11 And then you asked: Why weren't more attorneys
12 invited from Shell?

13 And he said he just didn't invite more
14 attorneys from Shell.

15 And that was -- that's my recollection of
16 it. Now, you don't like that answer, so you keep --
17 you keep badgering him and fussing with him about
18 it. But his answer is not any different or better
19 now than it was before.

20 MR. SIMON:

21 Q Did you recommend that the attorneys at
22 Shell working on benzene leukemia cases coordinate
23 all their discovery?

24 MR. MOORE: I object.

25 MR. SIMON: Why is that?

1 MR. MOORE: Because it deals with the work
2 product of the lawyers at Shell in defending ongoing
3 litigation.

4 MR. SIMON: No, it was a recommendation
5 that he made. They don't have to follow his
6 recommendations.

7 MR. MOORE: Objection to the question.
8 It's outside the scope of -- well, we object as to
9 what Mr. Faulk recommended to lawyers at Shell that
10 Shell should do in the defense of benzene cases.

11 MR. SIMON: Are you going to instruct him
12 not to answer that?

13 MR. MOORE: Well, you are entitled to ask
14 the witness anything that there is that's relevant
15 to the segregation of documents. Some of that is
16 frankly what we view to be privileged, but you are
17 entitled to ask him that because the judge says that
18 you can.

19 MR. SIMON: Let's mark this spot.

20 [THE TRANSCRIPT WAS MARKED]

21 MR. MOORE: But in terms of discussions
22 among the lawyers and Shell about how the cases are
23 going to be defended in a general sense, no, you may
24 not inquire into that.

25 MR. SIMON: I'm engaging in here inquiry to

1 determine whether there's been proper activity in
2 segregating and filing documents, and this man here
3 recommended coordination, which is what we've seen a
4 pattern of, I believe, and I think I'm entitled to
5 an answer whether he recommended it be coordinated.

6 MR. MOORE: No one has suggested there was
7 any improper activity in segregating documents. The
8 only one is made by you whether there was improper
9 activity on the part of Shell in responding to your
10 discovery request. That's the only question
11 involved in this matter.

12 MR. SIMON: I think the judge has said that
13 we were inquiring into the impropriety and the way
14 to get at it was through the segregation. But let's
15 not argue anymore.

16 Q What do you mean by "sensitive documents"?

17 A Documents which could prove damaging
18 through misinterpretation or in fact damaging
19 evidentiarywise.

20 Q Did you have any particular documents in
21 mind?

22 A No.

23 Q Now, you made a presentation this day,
24 didn't you?

25 A Uh-huh. Yes, I did.

1 Q And you didn't make the presentation on
2 behalf of Shell Oil Company, did you?

3 A I did not.

4 Q You were speaking only on behalf of
5 yourself, weren't you?

6 A Yes.

7 Q Now, did you recommend that the other
8 companies coordinate, that all their lawyers
9 defending benzene leukemia cases coordinate with
10 each other?

11 A No.

12 MR. MOORE: Excuse me.

13 MR. SIMON:

14 Q You didn't?

15 A No.

16 MR. MOORE: I object to what he told
17 lawyers at Shell about --

18 MR. SIMON: I just asked him about lawyers
19 at other companies.

20 MR. MOORE: Then I misunderstood the
21 question. Excuse me.

22 MR. SIMON: Let's read him back the
23 question.

24 MR. MOORE: No, you've clarified it for
25 me.

1 MR. SIMON:

2 Q Do you remember the question?

3 MR. MOORE: He answered. He said no.

4 A I think the answer was no.

5 MR. SIMON:

6 Q Well, then, I don't understand what this
7 paper is. You said industry response. You said
8 coordinate, which is a verb, infinitive. Who are
9 you recommending coordinate?

10 A As I answered your previous question when
11 I referred to examples one and two in the rather
12 lengthy dialogue that you had, I never talked about
13 intercompany coordination. This has nothing to do
14 with that at all. It was designed to make
15 suggestions to people as to what they could
16 do within their own individual company.

17 Q So your suggestion was that each company
18 within itself coordinate all the attorneys and
19 people that were responding to discovery in
20 benzene leukemia cases?

21 A I thought it was a good idea that they
22 get their act together within their own companies
23 regarding benzene.

24 Q And as I understand the sense of this,
25 the reason to get together under A was to avoid

1 unnecessary disclosure of sensitive documents.

2 Is that correct?

3 A Unnecessary or inadvertent disclosure.

4 Q What do you mean by unnecessary?

5 A Producing a document that's not
6 responsive. Producing a document that's subject to
7 an objection and not being aware that the objection
8 is possible or relevant.

9 Q Did you discuss -- now, as I understood the
10 way you conducted this presentation, you put these
11 visuals on the overhead and did some talking, didn't
12 you?

13 A That's correct.

14 Q Now, did you talk about how -- what kind of
15 documents were sensitive?

16 A No.

17 Q You didn't mention them?

18 A No.

19 Q You didn't give any examples?

20 A No.

21 Q Did you explain what you meant?

22 A No.

23 Q How were people to know what you meant?

24 A I have no idea. Other than what my words
25 said.

1 Q Are you aware of any examples from other
2 companies where the failure to coordinate led to
3 the unnecessary, inadvertent disclosure of sensitive
4 documents or information?

5 A No.

6 Q What was the nature of your concern that
7 led you to make this recommendation if you didn't
8 know that this thing had occurred?

9 A It is a typical concern and fear of anyone
10 managing complex litigation, working on complex
11 litigation, that in a large, repetitive, complex set
12 of litigation that inadequate control of objections
13 or documents will lead to unnecessary and
14 inadvertent disclosures. That's what that's all
15 about.

16 Q Now, I notice here that in terms of an
17 industry response of comprehensive strategy that
18 preventing disclosure of these documents was your
19 first suggestion. Is that right?

20 A It is the first thing that I addressed.

21 Q Am I to infer from that it's the one you
22 considered the most important?

23 A No.

24 Q How many others did you list in terms of
25 your suggestions?

1 A Depends on whether you talk about the
2 subsets. There are several other pages following.

3 Q Did you have any sensitive documents in
4 mind when you prepared this suggestion?

5 A No specific ones, no.

6 Q Any particular types of documents in mind?

7 A The examples that I thought of immediately
8 were the documents which were revealed in the
9 asbestos litigation that I had seen Fred Baron of
10 Dallas make a presentation on at an ATLA conference
11 in San Diego.

12 Q And which were those?

13 A I don't know what they were but they were a
14 number of Manville documents.

15 Q What kinds of things did they say that made
16 them sensitive?

17 A Basically they revealed information that
18 suggested an earlier knowledge of the hazards of
19 asbestos than what the company was actually saying.

20 Q And you regarded that those were very
21 sensitive because they indicated the company had
22 knowledge prior to the public record?

23 A With respect to those documents, yes.

24 Q And those would be the particularly
25 sensitive documents that you wouldn't want to

1 unnecessarily disclose?

2 A And another thing is because those
3 documents were well in advance of the literature
4 on the subject as well.

5 Q Now, as I understand it, this is A and
6 it's one -- the way I read this Page 18, is 1 a
7 subset of A?

8 A Yeah, I guess you could say that.

9 Q By subset, I guess I mean that 1, 2, 3 and
10 4 are ways in which to accomplish A?

11 A That's a fair statement.

12 Q Okay.

13 What does suggestion 1 mean? Create
14 benzene data bases for documents.

15 A Basically it means organize your documents,
16 if you can, into some manner of computer control so
17 that you can trace and follow the production of
18 documents in a number of different cases so that you
19 know what's been produced in one case as well as in
20 another case, so that you don't have conflicting
21 responses.

22 Q Is that a technique you employed here at
23 Shell?

24 A There was an attempt made to do that.

25 Q Did you direct that attempt?

1 A Yeah, I -- yes, I did.

2 Q And when you say an attempt, do you imply
3 that there was some problem in accomplishing the
4 goal?

5 A It was never completed.

6 Q Do you know why not?

7 A No, I don't.

8 Q Now, with regard to No. 8, the effort to
9 avoid the disclosure of sensitive documents, did
10 you ever make an effort, yourself, to find out
11 whether Shell had any sensitive documents?

12 A A specific effort to do so?

13 Q Yes.

14 A I suppose that to the extent that we had
15 an incomplete effort on the idea of the data base,
16 yes, I did.

17 Q What did you do?

18 A We made an attempt to survey a portion of
19 files in HS & E to determine what sort of documents
20 existed and that the company had maintained. And
21 we looked at them and tried to organize them into
22 something that we could evaluate for future
23 liability estimates.

24 Q You used the -- the subject of the sentence
25 was "we." Who is the "we" that did this with you?

1 A I'm talking about Shell. I was the one in
2 charge of the project.

3 Q Okay.

4 A Paralegals assisted me and we had a
5 consulting company involved who was the --

6 Q Who was the consultant?

7 A -- computer people, American Legal Systems.

8 Q Where are they from?

9 A New York.

10 Q Excuse me.

11 A New York.

12 Q Now, if you could, walk me through the
13 process. You determined at some point to make
14 a survey of whether there was any sensitive
15 documents. What was the first step you did in doing
16 that?

17 A Well, we -- it's kind of hard to say exactly
18 how I got started. The exercise, I believe, sprang
19 out of one of the cases. And the idea was that
20 there was an understanding that we didn't have any
21 real idea what the company's situation was with
22 respect to that.

23 And I made a recommendation that they
24 survey certain selected portion -- representative
25 portion of documents just to make a pass to see what

1 it looked like and to computerize that through a --
2 a retrieval system that would allow us to coordinate
3 with respect to those documents which perhaps had
4 been produced, which had not.

5 And the idea was that we would also plan
6 to put interrogatories and depositions on it, too,
7 although that, to my knowledge, never came to pass.

8 Q Now, how did you conduct this survey? Give
9 me the details of it.

10 A It was done precisely the same way as I
11 suggested to you previously that we did document
12 productions. We made a call to the appropriate
13 people in Health, Safety & Environment and told them
14 that we would like to -- what we were interested in
15 doing. And they then provided us with the files
16 that they felt were appropriate. And we made a
17 pass through them and looked at them and ultimately
18 microfilmed them and assigned numbers to them.

19 Q Let me -- when you said -- who were the
20 appropriate people in HS & E that you talked to?

21 A I guess Suzanne would be the one.

22 Q How was it that you described to her what
23 you were interested in doing?

24 A Well, we had -- I don't really recall. And
25 the thing -- I don't really recall exactly what I

1 told her, but we were trying to get a representative
2 sample of benzene-related documents. And the
3 decision, as I recall, that was made was that some --
4 I don't think all -- of those central information
5 services files would be pulled and surveyed and
6 microfilmed and this data base would then be
7 constructed to access them.

8 Q The central info files, the files at HS & E
9 that we call the central files?

10 A Yes.

11 Q Okay. And what did you tell her we were
12 looking for? I remember earlier you talked about
13 hearing Fred Baron and finding these potentially --

14 A Oh, no, she was not involved in determining
15 whether or not a document was, quote, sensitive or
16 not. She was told, as I understand it, to isolate
17 benzene, files that related to benzene.

18 Q And then her job was to find files related
19 to benzene and pull them, is that right?

20 A That's my recollection.

21 Q The next verb you used was "surveyed."
22 Does that mean someone looked at them to determine
23 which ones were sensitive?

24 A I don't think we -- we didn't look at
25 them for that purpose. We looked at the files to

1 determine whether they were files that really dealt
2 with the -- with benzene. A kind of a quality
3 checking sort of thing. There wasn't anybody who
4 made a pass through those, I don't think, ever,
5 to determine whether or not those had sensitive
6 documents in them or not.

7 Q How could you conduct, as I understand it,
8 this effort to create a data base if creating a data
9 base for documents is important for purposes of --
10 for purposes of preventing the inadvertent
11 disclosure of sensitive documents, how do you do
12 that unless someone is going through and determining
13 what a sensitive document is?

14 A I never testified that we did it.

15 Q Never did what?

16 A We simply did not create a functioning,
17 reliable, effective data base. It never was
18 created.

19 Q So what you are saying is -- but I'm just
20 talking systematically. Now you've changed from
21 what you did into your plan. Your plan was to
22 create a data base for purposes of avoiding
23 unnecessary disclosure of sensitive documents.
24 Wouldn't it be true that you would have to go back
25 through and determine which ones were sensitive in

1 order to make it work?

2 MR. PICKLE: I object to form. I think
3 that's a mischaracterization of the testimony.

4 MR. SIMON: Go ahead.

5 A If you -- to get to that point, ultimately
6 you do. But you have to have a functioning,
7 reliable, accurate data base in order to get to that
8 point.

9 MR. SIMON:

10 Q So you first have to have a data base of
11 what's there and then someone has to go and look
12 at each document and determine whether they're
13 sensitive?

14 A And that wasn't, obviously, the only
15 purpose.

16 Q What kind of data base was there?

17 A A data base that had some documents that
18 were indexed by microfilm number, by author, date,
19 title. To my understanding, it didn't have all of
20 the documents. The documents were never reviewed
21 for, in fact, whether they all really even related
22 to benzene. Basically, a mass of documents was
23 thrown on and no quality control or review was ever
24 really done to them.

25 Q So, as I understand it, you did have an

1 index that had the author, date and title, but it
2 had never been quality controlled as to whether that
3 list of author, date and title properly reflected
4 what was in the files?

5 A And to my understanding, the times that
6 it was run proved that it indeed did not accurately
7 reflect the information we wanted to get out.

8 Q And what effort was made to make it better?

9 A None.

10 Q None? So, as I understand it, then, this
11 was sort of an aborted effort that you -- the plan
12 would have been to coordinate by getting a data
13 base, you found out the data base wasn't much good,
14 you never got any further?

15 A That's right.

16 Q Why is that?

17 A When you come up with a non -- unreliable
18 system, it's sometimes difficult to obtain further
19 funding.

20 Q You gave me the name of a company in
21 New York, and I can't seem to read my own writing
22 here. What is it?

23 MR. MOORE: American Legal System.

24 MR. SIMON: Thank you.

25 Q What did they do?

1 MR. MOORE: American Legal Service. Excuse
2 me.

3 A For lack of a better term, they were the
4 computer people. They were the people that assisted
5 in creating the design of the data base with me and
6 actually collected the tapes, sent the tapes back
7 and got the thing up and running. I'm not a
8 technician, so I can't tell you any more than that.

9 MR. SIMON:

10 Q Well, let me see -- and I'm a little lost.
11 It was -- prior to making this effort, there was
12 the ability to go down and look at an index on
13 microfilm? Is that what it was? And then you
14 did something else?

15 A Prior to this?

16 Q Or there was nothing prior to this?

17 A I have no idea whether there was an index
18 prior to this or not.

19 Q So the index that you are talking about
20 that may or may not have been perfect was created
21 by this American Legal Service?

22 A That's correct, in conjunction with -- in a
23 design meeting with me.

24 Q What?

25 A In a meeting with me to figure out exactly

1 what I thought would be helpful.

2 Q And they put together this index, and then
3 you didn't think it was good enough to recommend the
4 funding for the rest of the project?

5 A It proved sufficiently unreliable that I
6 would never rely on it completely in anything.

7 Q Does that index still exist?

8 A To my knowledge, yes.

9 Q I mean, is it available if we went down to
10 the proper agency to get it?

11 A It wouldn't be in HSE. The microfilm
12 documents are available. The microfilm is
13 available, presumably. I haven't seen it in over
14 two years, but presumably it is. Accessing the
15 data base would take you a lot of time and effort in
16 learning a computer language and getting appropriate
17 security passwords and things like that.

18 Q But that's -- I mean, it's here, they didn't
19 take it back? I mean, you just didn't finish the
20 project; whatever you paid for is here?

21 A That's right.

22 Q So the computer capability to access
23 documents exists? It's not in HS & E?

24 A Well, all the original documents are still
25 in HS & E, where they were to begin with. All

1 that's -- the data base is not useful to retrieve
2 those particular original documents, because those
3 original documents are not microfilm numbered. So
4 the data base is only useful to retrieve microfilm-
5 numbered documents and doesn't even retrieve those
6 accurately.

7 Q Did you ever make an effort to -- outside
8 of this -- to look at any Shell files to determine
9 whether there were any sensitive documents that had
10 not been disclosed?

11 A Only on a case-by-case basis.

12 Q I'm not sure I understand your answer.

13 A Well, as appropriate -- as requests for
14 production, for example, would come in, we would
15 meet with appropriate people and determine what may
16 or may not be responsive, the burden in producing
17 it, and then appropriately we may go through and
18 actually look at some documents. And occasionally
19 documents did come to my attention during the
20 ordinary course of discovery and document
21 production.

22 Q What documents came to your attention,
23 other than the Soley document, that you classified
24 as sensitive documents under your definition?

25 A The only documents --

1 MR. PICKLE: I object to form.

2 A The only ones of any significance that I
3 can recall were those that would have been in the
4 documents that were in Mr. Tyler's office.

5 MR. SIMON:

6 Q When did this effort to create the data
7 base with American Legal Services take place?

8 A 1985 to '86, something like that.

9 Q Now, that was around about the time you
10 told me that you discovered the Soley document, is
11 that right?

12 A That's right.

13 Q Did you find it in conjunction with your
14 work with American Legal Services to put together
15 the data base?

16 A I don't recall. I could have, but I don't
17 recall.

18 Q Would the Soley document, in your mind, be
19 the kind of sensitive document you referred to in
20 No. 8?

21 A Not necessarily.

22 Q Why not?

23 A It reflects nothing that was not already
24 established in the literature.

25 Q What does it reflect, in your mind?

1 A I'd like to see the document, if I'm going
2 to be asked questions about it.

3 Q Okay.

4 You studied the literature concerning
5 benzene leukemia?

6 A I did do some study of it, yes.

7 Q Okay.

8 Your second recommendation under A is:
9 Centralize responsibility for first-chair defense.
10 What does that recommendation mean?

11 A The idea is that you -- I guess centralizing
12 means put it in a single unit or a single individual
13 or a single department, however you want to do it.
14 The idea is that you don't have it spread out all
15 over the world, you have a centralized
16 responsibility with a discrete group of people,
17 so that you know exactly what they're doing.

18 Q Would this recommendation describe the way
19 it was conducted here at Shell at that time?

20 A No.

21 Q Closely monitor outside counsel and joint
22 defend cases. What does that mean?

23 A It means the managing attorney, who is
24 looking over the shoulder of outside counsel and
25 managing a case, should have a good idea of what --

1 of how that attorney is handling the responses to
2 discovery and other matters.

3 Q No. 4. Disclose sensitive benzene
4 documents only on court order. What do you
5 mean there?

6 A Don't surrender or disclose or reveal
7 sensitive documents to which you have an objection
8 until all of the objections have been overruled.

9 Q Do you know of any document that you have
10 seen, that you can identify, that you found that
11 would fit your definition of sensitive?

12 A My definition of sensitive?

13 Q The one used here, sensitive meaning that
14 it would be -- you know, you described it earlier
15 in terms of the presentation Mr. Baron made.

16 A No.

17 Q No? But the ones that you did find that
18 conceivably were in that category are in the 46
19 boxes in Tyler's office?

20 MR. PICKLE: Object to the form. Asked and
21 answered.

22 A Things that I was concerned about would
23 have been, yeah.

24 MR. SIMON:

25 Q Are you the one that gathered those

1 documents that were sent to Tyler's office?

2 A Over my years at Shell, I gathered the
3 majority of them, yes.

4 Q Who gathered the ones that you didn't?

5 A With respect to benzene, no one.

6 MR. SIMON: Let's stretch a minute.

7 [Recess]

8 MR. SIMON:

9 Q On Page 21 --

10 MR. MOORE: Page 21 of what?

11 MR. SIMON: Same document. I'm sorry. I
12 haven't changed yet.

13 A I guess this is what he's referring to.

14 MR. SIMON:

15 Q I'm referring on the bottom of this
16 document there's a computer-generated number in
17 the last, there's a dash and then there's a digit.
18 That's the pagination I'm referring to.

19 A Okay.

20 Q No. 5 is: The trial may present a high
21 risk if few defendants are involved. What do you
22 mean by that?

23 A That means that if you have less people in
24 the case to spread the resulting judgment, you have
25 a risk of paying more money.

1 Q Now, as I understand, let me just get the
2 number right, is this still 6? Okay. I just can't
3 do numbers. No. 6. As I understand it, it's your
4 testimony that this is purely your own work and your
5 own ideas.

6 A It is.

7 MR. MOORE: Asked and answered.

8 MR. SIMON:

9 Q And going back now to Page 18 --

10 A Okay.

11 Q You recommended to this group that they --
12 "Industry Response: A Comprehensive Strategy," this
13 was your recommendation what each company should do,
14 isn't it?

15 A It was my recommendation as to what a good
16 idea was. I didn't recommend that any particular
17 company there do anything.

18 Q You just thought it was a good idea?

19 A I said: These are some ideas I have that
20 might increase your efficiency.

21 Q Right. Now, as you sit here today, do you
22 still think they're a good idea in terms of the way
23 to defend?

24 A Sure.

25 Q All of them?

1 A Every one of them.

2 Q Did you make -- who was there from Shell?
3 Mr. Long?

4 A Uh-huh. Yes.

5 Q Was he your supervisor?

6 A No.

7 Q What was his --

8 A He was just another staff lawyer like I
9 was.

10 Q Did you ever make any of these
11 recommendations to your supervisors at Shell?

12 MR. MOORE: I object for the reasons
13 previously stated.

14 MR. SIMON: You're not going to let him
15 answer?

16 MR. MOORE: No. We've been through the
17 exact same question and objection before.

18 MR. SIMON:

19 Q I believe your testimony was that Shell did
20 not centralize the responsibility for first-chair
21 defense and in-house management of benzene
22 litigation. Is that right?

23 MR. MOORE: I object.

24 MR. SIMON: He hasn't answered that one.

25 A If I did, we don't need to go any further.

1 MR. MOORE: Exactly. But if he did, he
2 shouldn't have been allowed to answer it, because
3 that deals with the matters involving the defense
4 strategy of Shell that Richard does not need to
5 respond with information to you in this case.

6 MR. SIMON: Let me ask you another
7 question.

8 Q How did you feel about your own employers
9 not following some of these suggestions?

10 MR. MOORE: I object.

11 MR. SIMON: Go ahead.

12 MR. MOORE: It assumes that they didn't
13 follow the suggestions and it deals with the defense
14 strategies utilized by Shell.

15 MR. SIMON: But he already testified that
16 they didn't.

17 MR. MOORE: It doesn't make any difference
18 to me what he already testified to. I object to the
19 question.

20 MR. SIMON: How he felt about it? That's
21 not a company strategy, how he felt about it.
22 That's a man's emotional --

23 MR. MOORE: Well, you are getting into
24 the areas of whether they did or did not follow
25 his recommendations and, if they didn't, why they

1 didn't.

2 MR. SIMON: No, I didn't ask why they
3 didn't.

4 MR. MOORE: Well --

5 MR. SIMON: I can't agree.

6 MR. MOORE: I'm just suggesting, Mr. Simon,
7 that you are not allowed to go into this area.

8 And the witness is requested not to give
9 any information about any decisions made by Shell's
10 lawyers as to how the company was going to be
11 defending these lawsuits.

12 MR. SIMON: But, now, I asked the question
13 about this man's subjective state of mind, not about
14 the defense of any case, but about the fact that he
15 in his own time produced recommendations and
16 testified that his company was not pursuing
17 these. And I want to know how he felt about
18 it. Your objection has nothing to do with his
19 perception -- feelings about it.

20 MR. PICKLE: The objection has already been
21 made. Let's move on.

22 MR. SIMON:

23 Q Are you going to follow their instruction
24 and not answer that?

25 A As a lawyer sitting here with a client

1 telling me it's asserting the privilege, I have
2 no choice.

3 Q I have to tell you again you have a big
4 choice. I've told you many, many times that the
5 law -- and you should have studied it before you
6 came -- that these privileges do not pertain when
7 there's an allegation of misconduct. And I wish
8 you had studied the law before you came. You are
9 causing yourself a lot of unnecessary aggravation.

10 A You may continue.

11 Q Thank you.

12 Now, as I understand it, there were some 46
13 to 48 boxes which I'm going to get to see that were
14 in Two Shell Plaza, before that were in Mr. Tyler's
15 office on the 49th floor. How did those come
16 about? How did the boxes get assembled and how
17 did they get there?

18 A Okay. I suppose the beginning is the
19 best place to start. I can't really isolate a
20 beginning. But from time to time as I handled not
21 only cases involving benzene but any number of other
22 types of cases for Shell, I came across and
23 recognized things that I thought were interesting
24 and things that for no reason, really, other than
25 perhaps future reference, perhaps merely being a

1 pack rat kept.

2 There was a room on the 47th floor, when my
3 office was there, that was an empty room, and it was
4 an empty paralegal office on the interior where a
5 number of the trial lawyers at that time dumped
6 things, basically, kept things, just like I did.
7 And that room ultimately had some shelves installed
8 in it and things were put on the shelves, and
9 finally a box here, somebody would keep an entire
10 closed file, occasionally I kept an entirely closed
11 file, occasionally I kept portions of files that I
12 thought were interesting, forms, things like that.
13 And the room rapidly filled up to the point that you
14 almost couldn't get into it because there were
15 chairs and other things stacked on top of it in
16 there. That room was -- occasionally I would go
17 in and pull something out of it that I needed as a
18 reference, an article, for example, something like
19 that. And the rest of the time it was shut and
20 lights out.

21 When the litigation section reorganized in
22 I think it was 1987 or '88, I can't remember when, I
23 was told I was moving to the 48th floor. I was also
24 told that that office was going to be reassigned for
25 someone to use, the storeroom. And I was also told

1 that there would be no space allowed to me on the
2 48th floor, or any other lawyer, to put all the
3 things that were in that storeroom.

4 It obviously concerned me, because I,
5 probably like you or like any other trial lawyer
6 sitting here, you like to have the stuff that you've
7 worked on and accumulated over the years near you as
8 a reference. I was given a choice of a room in Two
9 Shell Plaza or a room that was many, many, many
10 floors distant from me to dump all that stuff.

11 Mr. Tyler and I visited and we were talking
12 about the problem over lunch and he says: Well,
13 I've got empty office space, I've got an empty
14 office. Why don't you just move it up there?

15 And that's what we did. And that's where
16 it remained until such time as it was sent back
17 here.

18 Q How is it that it came to pass that you
19 found the Soley document? Do you remember how you
20 came upon that?

21 A I think I've already told you that. I
22 don't remember the specific circumstances of how it
23 came up. Ultimately it was brought to my attention
24 and it was put into a binder in that room as
25 something I thought was interesting and would

1 be something I'd keep for future reference.

2 Q Now, what was -- there's the one binder that
3 you probably realize was produced to me. I wasn't
4 given the 46 to 48 boxes, I was given one binder.

5 A Sure.

6 Q Could you tell me how that binder -- what
7 was in that binder, what was the significance of it?

8 A Well, I think that my original intent was
9 to keep things that I recognized would be matters
10 that would attract attention and merit explanation
11 if they were produced or discussed in a case. And I
12 collected a number of documents. Some of them are I
13 guess now innocuous, some of them are the ones you
14 are concerned about here.

15 MR. SIMON: Read that back.

16 [The record was read as requested]

17 MR. SIMON:

18 Q Let me see if I understand you correctly.
19 If they would have attracted attention or merited
20 explanation if produced in a case, am I to infer
21 from that that as of the time you assembled that one
22 binder that they had not been produced in any cases?

23 A To my knowledge, the matters in those
24 binders -- certainly the Soley document. There's
25 another document in the binder that I recall, which

1 is the 1948 benzene API toxicology advisory, which
2 to my knowledge had been produced everywhere, in
3 lots of cases. So your question is incorrect.
4 There were materials that had been produced.

5 Q With the exception of the API document, had
6 those other materials been produced in other cases?

7 A I don't know.

8 Q Do you know that any of them had been?

9 A I don't know.

10 Q Do you know that the Soley document had
11 been produced in any case?

12 A I don't know.

13 Q But your concern was that they would
14 attract attention. What do you mean by they would
15 attract attention?

16 A I thought the Soley document was
17 interesting.

18 Q How was it interesting to you?

19 A It was an early document that reflected
20 pretty much the state of benzene knowledge as
21 reflected in another article that was published by
22 either Hunter or Mallory in 1939. I thought that
23 was rather interesting, so I kept it.

24 Q Why would it merit explanation if it came
25 out, then, if it was just a state --

1 A I didn't say that this particular document
2 merited explanation.

3 Q Why would it merit explanation?

4 MR. MOORE: I thought he just said --

5 A I just said it didn't.

6 MR. MOORE: I thought he just said he
7 didn't say that it did.

8 MR. SIMON: I know he didn't say that it
9 did or didn't. So I'm asking him if he is saying
10 either way.

11 A I don't know. Depends on the questions
12 that were asked.

13 MR. SIMON:

14 Q Do you regard it now as a document that
15 would attract attention?

16 A Believe me, not near the attention that
17 it's attracted here.

18 Q What about meriting explanation? Did you
19 regard its nonproduction as meriting explanation?

20 A Absolutely not.

21 Q Other than this one binder which had
22 original matters that would attract attention or
23 merit explanation if they were produced in a case,
24 what other organization did you have in these?
25 Did you have any other binders that were defined

1 in that way? Forgive me. Any other binders that
2 were defined that way, as things that would attract
3 attention or merit explanation?

4 A I think my testimony was "might." I can't
5 tell you whether any of these things necessarily
6 would attract anybody's attention. They certainly
7 were things that I looked at and said, "Oh, this is
8 interesting," and I kept.

9 Q For that purpose? Because they could or
10 might?

11 A Well, if I was interested in them, I
12 thought that -- I was interested in them. That's
13 why I kept them.

14 Q Any other binders that were organized in
15 the same way as things that would attract attention
16 or merit explanation?

17 A No.

18 Q Any other documents that you are aware
19 of that would fit into that category of attracting
20 attention or meriting explanation that were not in
21 that binder?

22 A Benzene documents produced by Shell Oil
23 Company, you are talking about?

24 Q Benzene documents in Shell's files. I want
25 to exclude nonbenzene stuff, but I don't want to

1 limit myself to written by Shell. The Soley
2 document wasn't written by Shell.

3 A Not that I'm aware of right now as I sit
4 here.

5 Q Now, you discussed assembling the binder
6 and its purposes to attract -- to deal with those
7 things, to attract attention or merit explanation.
8 Is that -- is that match -- does that phrase describe
9 what we call -- what you call on Page 18 potentially
10 sensitive?

11 A It could.

12 Q Well, does it, in your mind?

13 A No, not necessarily.

14 Q Those aren't the potentially sensitive
15 documents, in your mind?

16 A I did not view the Soley document as a
17 potentially sensitive document, no.

18 Q And you didn't tell Mr. Tyler that?

19 A I told him it was a document that I thought
20 was interesting and something that I thought he
21 should review.

22 Q Did you tell him it had never been
23 disclosed by Shell?

24 A Probably.

25 Q Did you tell him you were concerned about

1 its --

2 MR. MOORE: I object. We've already
3 objected to what you -- what he said to Mr. Tyler,
4 and I frankly thought that you understood that and
5 that perhaps you were going to ask him something
6 different. But you are asking him the exact same
7 thing we objected to before.

8 MR. SIMON:

9 Q Did you read Tyler's deposition?

10 A Yes, I did.

11 Q You did? When did you read that?

12 A Yesterday.

13 Q Who gave it to you?

14 A Mr. Collins.

15 Q How much time did you spend reading it?

16 A Half hour.

17 Q Did you talk to Mr. Tyler prior to giving
18 that deposition?

19 A No.

20 Q Have you talked to him since?

21 A I exchanged pleasantries with him
22 yesterday.

23 Q Did you talk to him about your being
24 deposed today?

25 A Not specifically.

1 Q Did you mention it to him, being deposed
2 today?

3 A I think he knew.

4 Q Did you mention it to him?

5 A No.

6 Q Did he discuss it with you?

7 A No.

8 Q Did you discuss any of the subject matters
9 we're talking about today with him?

10 A No.

11 Q Did you discuss the blue binder with him?

12 A No. When?

13 Q Yesterday.

14 A No.

15 Q Did you discuss the 48 boxes with him
16 yesterday?

17 A No.

18 Q Now, as I understand your testimony, these
19 are just sort of a bunch of things that you've
20 gathered over time. Did they involve any
21 instructions to anybody else to get documents?
22 In other words, at any time did you send somebody
23 to get documents?

24 MR. MOORE: I'm sorry. The question is do
25 they involve what?

1 MR. SIMON: I'm trying to understand the
2 46 boxes. The general tenor of his testimony, as
3 I understand it, was that it was his personal files
4 that just developed over time, sort of an accretion
5 system. It evolved over time.

6 MR. MOORE: You mean 48.

7 MR. SIMON: Did I call it 48?

8 MR. MOORE: That's what the number is.

9 MR. SIMON: Okay. I'll call it 48.

10 MR. MOORE: Then the question is did he do
11 what?

12 MR. SIMON: Did he give anybody
13 instructions in terms of gathering documents that
14 led to this collection of the contents of the 48
15 documents -- boxes?

16 MR. COLLINS: The whole collection?

17 MR. MOORE: Did he leave instructions for
18 any particular person to take any given document and
19 put it in those files?

20 MR. SIMON: Right.

21 A I don't know. With respect to particular
22 things, I may have asked my paralegal to put this
23 in a binder or something like that at times, but I
24 don't -- there weren't any instructions to go out and
25 gather up things and put them in binders. That just

1 wasn't done.

2 MR. SIMON:

3 Q Were the documents relating to benzene
4 gathered in the process of doing general research
5 or in the process of preparing a defense for a
6 particular case?

7 A Everything was done in the context of
8 preparing defense for a particular case.

9 Q So that would -- would it be improper to
10 infer, then, that the Soley document came into those
11 boxes because you found it in the preparation for a
12 particular case?

13 A I have no idea, because I told you I don't
14 really recall the circumstances of how it came up.
15 But I presume -- I'm not going to presume. I've
16 answered that.

17 Q Well, in terms of making inquiries as to
18 what documents exist, I've heard of two different
19 kinds:

20 One is -- and I want to see if I've got the
21 total universe. One is your inquiries into the
22 cases which led to things in the 48 boxes.

23 And, two, this effort with American Legal
24 Services when there was at least some effort to
25 maybe gather documents, maybe to list them.

1 Any other efforts to gather documents that
2 you made on benzene?

3 A None I made.

4 Q Did you actually gather documents in this
5 American Legal Services search? Or was it just
6 labeling documents?

7 A Well, I mean, gathering is probably the
8 most apt word. They were collected and microfilmed
9 and not looked at.

10 Q If you had to give me your best informed
11 opinion now, would it be your best informed opinion
12 that you came upon the Soley document in preparing
13 for other cases or in the American Legal Services --

14 MR. MOORE: Excuse me. I object.
15 Mr. Simon, I haven't counted, but my estimate is
16 that's the ninth time that you have asked that
17 question. And it really doesn't serve any useful
18 purpose to continue to go over it.

19 A I don't remember how the Soley document
20 came into my possession.

21 MR. SIMON:

22 Q What did you tell Mr. Tyler about the
23 contents of those boxes?

24 MR. MOORE: I object. Oh, about the
25 contents of the boxes? Excuse me. I do not

1 object.

2 A Nothing. Other than that the boxes were
3 coming from the storeroom and were to -- and he --
4 and he offered to put them into his office.

5 MR. SIMON:

6 Q So he was just a storehouse for your boxes?

7 A That is it.

8 Q Originally, he was a storehouse. Did
9 anything else ever occur with the boxes? In other
10 words, up to the point you are describing now, he
11 was just a storehouse, you never told him about
12 them, he didn't know about them, presumably he
13 didn't look at them. Did it ever come to some point
14 when you said, "Hey, this is here," and he could
15 begin to look at it, work with it, describe it?

16 A There was nothing there that he should have
17 had a specific reason to look at at any time.

18 Q So basically, in terms of Tyler's mind,
19 your understanding was that, "Hey, those are 48
20 boxes I got from Faulk and I don't know what's in
21 them and I'm not all that interested"?

22 A Well, he knew generally what they were,
23 because they were put up on shelves and not kept
24 in boxes.

25 Q But did you ever walk through any of the

1 boxes with him?

2 A No.

3 Q Did you ever show him what was in the blue
4 binder?

5 A Anything that I would have shown him with
6 respect to that binder would have been a privileged
7 attorney-client communication, if in fact I did so.

8 Q Did you ever tell him that it was you
9 wanted to avoid disclosure of the Soley document?

10 A It would have been a privileged
11 attorney-client communication.

12 Q Are you refusing to answer that?

13 MR. COLLINS: We need to assert the
14 privilege.

15 A Someone has to assert the privilege before
16 I refuse to answer.

17 MR. MOORE: Yes. Yes, we assert the
18 privilege.

19 MR. SIMON: Read back the question.

20 MR. MOORE: We assert a privilege relating
21 to any communication between the witness and
22 Mr. Tyler as it results to -- as it pertains
23 to litigation or anything in anticipation of
24 litigation.

25 MR. SIMON: Read it back.

1 [The record was read as requested].

2 MR. MOORE: I object.

3 A On instruction of counsel, I refuse to
4 answer.

5 MR. SIMON: Let's mark that part of the
6 transcript, please.

7 [THE TRANSCRIPT WAS MARKED]

8 MR. SIMON:

9 Q Any purpose in the moving of the documents
10 from where you had them to Tyler's office have to do
11 with concerns about security?

12 A That may have been -- John voiced that
13 concern at one point.

14 Q What concern was that?

15 A He just felt like they would be secure up
16 in his offices, and he assured me that they would be
17 secure.

18 Q Well, why would he have concern -- explain
19 to me why he would have concerns about the security
20 of documents if he didn't even know what they were?

21 A Anytime you take possession of a client's
22 files, you want assurances that the matters are
23 going to be secure. That's the sum of it.

24 Q I wasn't clear in my question, sir.
25 What I wanted to ask you was: Did Tyler express any

1 concern with the security of the documents while
2 they were in one of your offices or in this room you
3 had?

4 A He did.

5 Q What concern was that?

6 A He was concerned that the documents or the
7 materials in the room such as they were might be
8 accessible to -- to people and not be secure.

9 Q What did he know about the documents at
10 that point, before they were given to him?

11 A Anything he knew about the documents
12 at that time would have been a privileged
13 attorney-client communication.

14 MR. SIMON: Let's mark that part.

15 [THE TRANSCRIPT WAS MARKED]

16 [Recess]

17 MR. SIMON:

18 Q Now, Mr. Tyler's office, where your files
19 were taken, are there any other Shell employees that
20 have access to that?

21 A I presume any Shell employee would have had
22 access to it. I was the only Shell employee that
23 had a key to Mr. Tyler's office.

24 Q Well, when you say they would have had
25 access, these were your personal files, weren't

1 they?

2 A Well, they weren't all mine. I mean, they
3 were files that had been put together by other Shell
4 attorneys, too. Not relating to benzene, but they
5 weren't all mine.

6 Q Were there other files about benzene from
7 other attorneys? Or were all the benzene files
8 yours?

9 A I believe all the benzene files were things
10 that I had collected.

11 Q Who were the other attorneys that had
12 access to Tyler's office that you know of?

13 MR. COLLINS: Do you mean other than the
14 normal course of business of Tyler's office?

15 MR. SIMON: Do you mean other than Tyler's
16 attorneys?

17 MR. COLLINS: No. I want to clarify
18 your question. In other words, are you asking did
19 someone have special access or if an attorney went
20 up there because he wanted to see John Tyler about
21 the possibility of representing a case, he would
22 have had access as any individual might have had
23 access to the office.

24 MR. SIMON:

25 Q I mean, who had access to this room with

1 the materials in it?

2 A I never heard that there were any criteria
3 to deny access to any Shell attorney.

4 Q Well, how did you get in there? You had
5 your own key.

6 A Well, I had a key, yeah. And, of course,
7 whoever went into the office -- John's door -- see,
8 John's firm was on 50 and 49. And the main entrance
9 was on 50. And there was an entrance to the
10 litigation group on 49 that was locked. You had
11 to go in through that door. And I had a key to go
12 in through that door, and the same key opened the
13 room.

14 Q If an attorney other than you who didn't
15 have a key wanted access because he wanted to see
16 your benzene books, what would he do, go to the
17 50th floor and down?

18 A He couldn't get in the 49th floor, so he
19 would have to go to the 50th. He might call John.
20 I don't know. Because I don't know if anybody ever
21 did.

22 Q Did you make it known to people that your
23 benzene books were there and were available to
24 people?

25 A Well, to who?

1 Q To Shell, other Shell employees.

2 MR. MOORE: Let me ask you -- I have no
3 idea. We would like a short recess.

4 [Recess]

5 THE WITNESS: I think we had a question
6 outstanding. Would you read it back?

7 [The record was read as requested]

8 A No.

9 MR. SIMON:

10 Q When you were with the Shell legal
11 department, to whom did you report?

12 A Throughout my career? Several people.

13 Q Go ahead.

14 A Initially my boss --

15 Q When did you start? Just so I can get
16 that.

17 A 1982. My general attorney, who was any
18 immediate supervisor, was James Evans.

19 My next general attorney was -- I think it
20 was Dave Kinnan.

21 My next general attorney was Steve Long.

22 He was followed by Dan Farr.

23 And then followed by Mr. Saum.

24 Q And during the time you were doing benzene
25 litigation, who were your supervisors? All of

1 those?

2 A All of those people, probably, to some
3 extent or another. It was seldom that I did not
4 have some benzene litigation going in my career.

5 Q Give me a sense -- I'm just trying to get
6 a sense of the chain of command between you and the
7 general counsel. How many steps when you were under
8 Evans?

9 A It varied. At least three.

10 Q And when you were under Mr. Saum?

11 A Two, I believe.

12 Q The entire time you were at Shell, how many
13 times did you meet with the general counsel?

14 A Numerous occasions. I can't tell you.

15 Q Hundreds, tens --

16 A Oh, no, not hundreds. But a significant
17 number of times.

18 Q More than 20?

19 A Certainly.

20 Q More than 20 times a year?

21 A No.

22 Q More than 10 times a year?

23 A I -- I've given you about as specific as I
24 can get.

25 Q You were at Shell for what, almost eight

1 years? Did you meet with the general counsel more
2 than 50 times?

3 A I would doubt it.

4 Q More than 25?

5 MR. MOORE: He has done the best he can
6 do.

7 MR. SIMON: Well, let me ask more than 25.
8 I'll stop.

9 A 25 sounds about right.

10 MR. SIMON: Okay.

11 Q Do you want to give me the dates when
12 Mr. Saum was your supervisor?

13 A I would say it was from early 1989 until I
14 left in 1990.

15 Q What about Farr?

16 A From late 1988 until early 1989.

17 Q Long?

18 A 1986 to 1988.

19 Q The next guy's name I can't pronounce, Dave
20 Kinnan?

21 A Kinnan.

22 Q I'm sorry.

23 A About six months in 1986.

24 Q Evans?

25 A 1985. I'm sorry. From 1982 until such

1 time as Kinnan took over.

2 Q Who was your supervisor at the time that
3 you had that project with the American Legal
4 Services?

5 A Part of the time it was Evans and part of
6 the time -- it may have been finished up under Long,
7 I can't remember.

8 Q Did Long know about the existence of the
9 Soley document?

10 A If he did, it would have been the result of
11 a privileged attorney-client communication.

12 Q Farr?

13 A Same answer.

14 Q Kinnan?

15 A Same answer.

16 Q Evans?

17 A Same answer.

18 Q Saum?

19 A Same answer.

20 Q So is it your testimony that if any of them
21 knew about it it's because you told them about it in
22 the process of --

23 A So far as I know. If they knew about it
24 from another source, I would have no idea.

25 Q And you are not willing to testify as to

1 which of them you told about it?

2 A I think I'm under instructions from counsel
3 for Shell to obey the privilege with respect to
4 that, and I'm constrained to do so.

5 MR. SIMON: Okay. Let's mark that part of
6 the transcript.

7 [THE TRANSCRIPT WAS MARKED]

8 MR. SIMON: And then let's mark this as the
9 last exhibit.

10 [Exhibit 7 marked]

11 MR. SIMON:

12 Q Do you want to identify this, please?

13 MR. MOORE: Is that the Soley document?

14 MR. COLLINS: I'm curious.

15 A It's not complete.

16 MR. HOBSON: There's a cover sheet to it.

17 MR. SIMON:

18 Q Now is this a complete copy?

19 A I don't know.

20 Q Would you look at it, please? I'm not
21 trying to mislead you and give you incomplete ones.

22 MR. MOORE: Where did this copy come from?

23 MR. HOBSON: Shell.

24 MR. MOORE: Did we produce it to you?

25 MR. HOBSON: Yes.

1 MR. SIMON: He wants to see if it's
2 complete.

3 THE WITNESS: Do you want to see it?

4 MR. SAUM: I was just curious.

5 MR. SIMON:

6 Q Is that one complete, Mr. Faulk?

7 A To the best of my recollection.

8 [Exhibit 7 remarked]

9 [Discussion off the record]

10 MR. SIMON: Let the record reflect that due
11 to my error I marked another document as No. 7. I'm
12 withdrawing it and giving him another No. 7 because
13 he testified the one I gave him was incomplete and
14 he has now testified this, I believe, is complete to
15 the best of his knowledge.

16 Q Is that correct?

17 A Well, Mr. Hobson raised something a minute
18 ago that somewhat concerns me, in that he says there
19 are different versions of this. This appears to be
20 the document that I'm familiar with, but without
21 comparing it to all the other versions, I'm not sure
22 I could tell you which is which. But it does appear
23 to be a document I'm familiar with.

24 Q Are you familiar with any different
25 version?

1 A No.

2 Q All right. And this is --

3 A And I don't know if that's the version I'm
4 familiar with either, if there are other versions
5 elsewhere.

6 MR. HOBSON: This Exhibit No. 7 to this
7 deposition was also marked as Exhibit No. 1 to John
8 Tyler's deposition. He identified this as the copy
9 he remembered seeing of the Soley document. This is
10 the copy that was given to me by Shell's attorneys
11 as being a duplicate of all the documents in the
12 blue binder, benzene binder.

13 THE WITNESS: Based on that representation,
14 if that's correct, I have no reason to believe that
15 this is not the document I'm familiar with.

16 MR. SAUM: Off the record.

17 [Discussion off the record]

18 MR. SIMON:

19 Q Just for purposes of clarification,
20 we've been referring most of the day to the Soley
21 document. Is this the one you've been referring
22 to?

23 A It appears to be, yes.

24 Q Okay. And this is the same document that
25 was in the blue binder that you had in Mr. Tyler's

1 office?

2 A Yeah.

3 Q And you don't remember when you first saw
4 it, except it was sometime in '85 or '86?

5 A That's my best recollection.

6 Q Nor do you remember the circumstances in
7 which you saw it?

8 A No.

9 Q You are not willing to testify as to who
10 else in the Shell legal department you gave it to?

11 A On instructions of Shell's counsel, I'm
12 constrained to observe the privilege that they've
13 asserted.

14 Q I'll hand it to you.

15 A Okay.

16 Q I'm going to ask you to read under Chronic
17 Poisoning.

18 A Okay.

19 Q This is a accompanied by the symptoms
20 associated with variable blood changes that may
21 occur. These changes may be listed as follows:
22 Leukemia, leukemoid blood pictures. Is it your
23 understanding that in 1943 that this is what was
24 commonly believed the possible harms from leukemia
25 [sic] were?

1 MR. PICKLE: I object to form. I think the
2 article speaks for itself. It's exactly what it
3 says in the prolog.

4 MR. SIMON: I didn't ask -- very
5 interesting, but a completely irrelevant comment.
6 I didn't ask him what the article said, I asked him
7 his view of what the common beliefs were at that
8 time.

9 A I have no opinion one way or the other as
10 to what the common beliefs were at that time.

11 MR. SIMON:

12 Q Have you made a study about the literature
13 and what it said about the risks of benzene at
14 various points in time?

15 A I have read some literature. I'm not a
16 toxicologist or epidemiologist or industrial
17 hygienist.

18 Q Did you make any study on your own on what
19 the state-of-the-art was in terms of what various
20 reports --

21 MR. MOORE: May I ask where you are leading
22 with this line of inquiry? Are you trying to
23 determine what knowledge he had about the effects
24 of benzene?

25 MR. SIMON: No. I'm using that as a

1 predicate.

2 MR. MOORE: Well, what's the point of it?

3 MR. SIMON: As a predicate, we're trying to
4 get at the significance of this document that he --

5 MR. MOORE: The document, as has already
6 been stated, is self-explanatory. You've referred
7 to it a number of times. This witness certainly
8 doesn't -- he didn't write it, he's only seen it.

9 MR. SIMON:

10 Q Have you ever seen a document from Shell
11 in the 1940s that says benzene may cause leukemia?

12 MR. MOORE: Excuse me. What has that got
13 to do with the purposes for which this deposition is
14 being taken?

15 MR. SIMON: I don't feel like I need to
16 testify.

17 Q Have you ever seen such a document?

18 MR. MOORE: No. If you explain the purpose
19 and tell me why this is legitimate, we may not have
20 any issue about it.

21 MR. SIMON: Well, the purpose is that
22 this man put these in a special binder due to some
23 significance he saw. I'm trying to get at the
24 significance. And I believe these go to the
25 significance of the document.

1 MR. MOORE: As to whether or not there
2 was any other article in '48 about the hazards of
3 benzene?

4 MR. SIMON: Not any other articles. What
5 Shell was saying in 1948.

6 MR. HOBSON: '43.

7 MR. SIMON: '43. The significance of
8 this article, as is well known in the history
9 of this case, is that this document is totally
10 inconsistent with all the other documents Shell
11 ever produced at that time.

12 MR. MOORE: Well, I guess that's a matter
13 of interpretation of the documents.

14 MR. SIMON:

15 Q Have you ever seen a Shell document
16 indicated from the 1940s that was released to the
17 public that indicated there was leukemia risk from
18 exposure to benzene?

19 A Not that I recall.

20 Q Have you seen any Shell document from the
21 1950s that that was released to the public that
22 indicated there was leukemia risk?

23 MR. MOORE: You've asked him that, I
24 believe.

25 A Yes.

1 MR. SIMON:

2 Q What documents?

3 A Do you want to go into those?

4 MR. MOORE: That's why I'm asking you the
5 purpose of this, Mr. Simon. Because you are now, as
6 I interpret what you are asking this witness, you
7 are asking him to identify what information -- I
8 guess you are driving at: What did Shell know about
9 benzene? You are trying to get at it through this
10 witness, which in essence is reopening discovery on
11 matters totally different than the purpose for which
12 discovery was reopened.

13 MR. SIMON: No, I believe we have a lot
14 of documents from Shell. I'm really not trying to
15 reopen discovery. What I'm trying to do is get at
16 what the purpose for putting this in this notebook
17 was.

18 MR. MOORE: Why don't you ask him that
19 question?

20 MR. COLLINS: That was asked and answered.

21 MR. SIMON: One person at a time.

22 MR. MOORE: If that's what you're trying to
23 get at, why don't you ask him that question?

24 MR. SIMON:

25 Q What was the purpose of putting this in the

1 blue binder?

2 A It was an old document and I thought it was
3 interesting.

4 Q What was interesting about it?

5 A Talked about -- it was a report that Shell
6 had gotten some 40 or so years before I came with
7 the company. It's not often you find things like
8 that.

9 Q What makes that interesting?

10 A Just an old document. It talked about a
11 subject that I was working with. I thought that was
12 interesting.

13 Q How is it different? How is this document
14 different from the old documents that you heard
15 Mr. Baron talk about in his talk about asbestos?

16 A My understanding is that the scientific
17 literature reflecting asbestos risks did not even
18 mention the risks associated with asbestos that
19 Johns Manville knew all about.

20 Q Do I infer from that you regard this
21 document as different because the scientific
22 literature did mention the risk of benzene?

23 A It did in fact, and the article so says.

24 MR. SIMON: Let's just take one more break.

25 [Recess]

1 [The deposition was adjourned without
2 further discussion on the record]
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