

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

FRANCES E. KEMNER, et al.)
)
Plaintiff,)
)
vs.) No. 80-L-970
)
MONSANTO COMPANY,)
)
Defendant.)

Before the HON. RICHARD P. GOLDENHERSH, Judge

REPORT OF PROCEEDINGS

JURY TRIAL

February 18, 1986

APPEARANCES:

MR. REX CARR & MR. JERRY SEIGFREID, Attorneys at Law
Appeared on Behalf of the Plaintiff.

MR. KENNETH R. HEINEMAN & MR. JOSEPH NASSIF,
Attorneys at Law
Appeared on Behalf of the Defendant.

MARSHA SCHNIPPER
Official Court Reporter

INDEXPAGE

DR. RAYMOND SUSKIND	
DIRECT EXAMINATION BY MR. HEINEMAN	3
CROSS EXAMINATION BY MR. CARR	9

1

2

3

4

5

6

7

8

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EXHIBITS

<u>Page</u> <u>Identified</u>	<u>Page</u> <u>Admitted</u>
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EXHIBITS SUBMITTED ON BEHALF OF THE PLAINTIFFS:

Plaintiffs' Exhibit No.:

1726	25	123
1727	44	123
1728	111	123
1729	156	

1 BE IT REMEMBERED AND CERTIFIED that heretofore, on
2 to-wit: February 18, 1986, being one of the regular judicial
3 days of this Court, the matter as hereinbefore set forth came
4 on for hearing before the Honorable Richard P. Goldenhersh, a
5 Judge in and for the Twentieth Judicial Circuit of the State
6 of Illinois, Belleville, St. Clair County, Illinois, and the
7 following was had of record, to-wit:

8
9 * * * * *

10
11 (The following proceedings were had in open Court.)

12 THE COURT: Morning.

13 MR. HEINEMAN: Your Honor, at this point I'd like to
14 be sure the state of the record is complete. I thought that
15 I had offered and the Court had admitted Defendant's Exhibit
16 1708 and 1709.

17 THE COURT: Let me look. 1708 is in. They've both
18 been admitted.

19 MR. HEINEMAN: All right. I don't believe I have
20 yet offered Defendant's Exhibit 1710, which is the
21 questionnaire.

22 THE COURT: Right.

23 MR. HEINEMAN: Krummrich clinical survey, and I
24 would like to offer that as a Defendant's Exhibit at this

1 time.

2 MR. CARR: We do not object, Your Honor.

3 THE COURT: Fine, it's admitted without objection

4 RAYMOND SUSKIND

5 being called on behalf of the defendant, having been first
6 duly sworn, testified as follows:

7 DIRECT EXAMINATION

8 BY MR. HEINEMAN:

9 Q. Dr. Suskind, you will recall that at the close of
10 business on Friday we were discussing the Krummrich clinical
11 survey, and at this time I'd like to hand you what's
12 previously been marked as Plaintiffs' Exhibit 1507A, sir,
13 which is in evidence and would represent to you that that is
14 is a chart prepared by Ms. Dianne Nicks, who is a nurse in
15 the employ of Mr. Carr's office. Have you seen that document
16 before, sir?

17 A. I have had an opportunity to look at it, sir.

18 Q. All right. And you're aware that Miss Nicks
19 testified here in court?

20 A. I am, sir.

21 Q. And have you had an opportunity to review her
22 testimony?

23 A. I have not.

24 Q. Now, with respect to that Exhibit 1507A, sir, does

1 it accurately represent the clinical survey which you
2 conducted at the Krummrich plant in 1979?

3 A. The exhibit as it -- as I see it is a little
4 confusing with respect to title. If this is supposed to be
5 gleaned from our report, it is not. None of this could have
6 been extracted from the report that we produced.

7 If it is a summary or a check-off list as it
8 appears to be of the clinical records, I find great
9 difficulty in understanding the number of instances in which
10 there were symptoms or chloracne or porphyrins or abnormal
11 lipids, and what the other things mean I really don't know.
12 I gather that these are other abnormal reports.

13 First of all, the symptoms that are checked off are
14 the headaches and sleep difficulty and fatigue and poor
15 appetite and the neurobehavioral problems, which I believe in
16 the questionnaire could be elicited from do you ever lose
17 your temper or words to that effect, and it would be
18 difficult for me to understand these checks simply because
19 the question was asked do you ever have headaches, and some
20 people do have some headaches, but the number that one can
21 elicit from the responses certainly is not an abnormal number
22 for problems of sleep or do you get tired. Some people do
23 get tired and if they got tired at any time they checked it
24 off. Poor appetite, some people occasionally have a poor

1 appetite. It doesn't say do you have it all the time or do
2 you have it now, but have you had a poor appetite at any
3 time.

4 So that the check-off of symptoms would appear to
5 be misleading, if you took that total number and said, well,
6 look how many people have abnormal symptoms, which I think
7 this is an attempt to do. With respect to porphyrins, I
8 think we said earlier that one can not use the figures that
9 appear in the laboratory reports as either normal or
10 abnormal, because there were no 24 hour urines taken and in
11 order to determine abnormality of out of range, one has to
12 have 24 hour urines.

13 I would also feel that these other laboratory
14 reports, including lipids, have to be looked at insofar as
15 the significance of the abnormality. For example, if you
16 have a just -- a low triglyceride, out of range triglyceride,
17 that may be abnormal, but it has no biologic, no medical
18 significance, so you can't check it off as being abnormal and
19 if the -- if the out of range either way, high or low were
20 checked off, then it was an erroneous way of determining
21 abnormal laboratory findings, whether they were lipids or
22 other laboratory findings.

23 Now, finally I think one has to look at the
24 chloracne check-offs, and if I can count these for a minute,

1 there are 30 checks here, as I see, for people who had
2 chloracne. Now, I'm not sure whether this is a history of
3 chloracne or chloracne findings, and if that's so, then
4 whoever reviewed this, Miss Nicks if it was, really didn't
5 examine the records carefully, because as the records will
6 show and as I pointed out in my testimony the other day about
7 the results of our findings, there were 65 percent of the
8 people in this study had a history of chloracne. That's 65
9 people had a history of chloracne.

10 MR. CARR: Your Honor, may I approach the bench?

11 THE COURT: Yes, you may.

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

14 MR. CARR: Counsel knows that the check marks
15 indicate current chloracne as reported by these clinical
16 records and for us to go through this farce of him pretending
17 that this is supposed to be a history or that it denotes or
18 it contradicted the 65 percent is ludicrous. Counsel should
19 interrupt this witness and tell him that the testimony in
20 this case is that this was from a current chloracne cases
21 rather than just go through this. It's misleading to the
22 jury.

23 MR. HEINEMAN: Your Honor, the witness just said
24 that if this were to include history then it's wrong in that

1 regard. Now, he's about, I assume, about to go in to say if
2 it's supposed to represent the current chloracne what his
3 conclusion would be with respect to that.

4 THE COURT: Well, you may assume that, but you don't
5 know it. I think it would be best for you to interrupt him
6 and guide him to that so that that is addressed, and that
7 will resolve it. I think that's the way to handle it.

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

9 Q. Dr. Suskind, I'd like you to assume, sir, that the
10 testimony of Miss Nicks was that the check marks reflected
11 under chloracne there were current chloracne findings
12 according to her review of the records. Now, would you
13 proceed, sir?

14 A. May I proceed? If that is so, then this is also
15 underreporting, because we found 42 people who had
16 chloracne. We examined people and found 42 out of the people
17 we examined had chloracne. That's not 30, that's 42. So
18 it's palpable underreporting, and if this is a -- if this is
19 an example of accuracy in estimating anything, whether it's
20 chloracne or symptoms or abnormal laboratory findings, I
21 think that I would in looking at the -- be very concerned
22 about its accuracy.

23 Q. Dr. Suskind, based upon your review of the people
24 whom you examined at the Krummrich plant in 1979, what was

1 your impression of the overall health of those individuals?

2 A. My overall impression was that this was a healthy
3 group of people, some of whom developed chloracne, but they
4 were not a sick group of workers, they were a healthy group
5 of workers.

6 Q. Dr. Suskind, in summary, based upon your own
7 studies and the 37 years that you have reviewed this dioxin
8 subject, would you give us your opinion as to the state of
9 science with respect to the effects of dioxin upon human
10 beings?

11 A. I can really only speak intimately from my own
12 experiences, and I believe that they have been substantial
13 with respect to being able to study a group of workers, a
14 population exposed to TCDD, and I think this has been a
15 rather unusual opportunity, and it has encompassed an
16 opportunity to observe the acute effects, the results of
17 acute exposure, the -- and its consequences, the subacute and
18 the subchronic effects of this exposure and also the
19 long-term health effects.

20 I have learned and I believe I have shared with the
21 Court in my testimony that with high levels of exposure,
22 which occurred back in 1949 in this -- in the Nitro group,
23 these high levels of exposure produced illness characterized
24 by chloracne and characterized by liver and lipid metabolism

1 disturbances, characterized by peripheral neuritis, but that
2 with time the systemic disturbances or the systemic
3 manifestations regress, and that if one looks at the
4 long-term effects, the only real significant effect that
5 persists is and that's in a mild form largely, chloracne.

6 In essence the early changes to an acute exposure
7 are reversible, and another important observation which I
8 have been able to find is that -- that the skin
9 manifestations, the chloracne, is a signal of toxicity and
10 that it's the skin is the primary organ and that in my
11 experience the people who have had chloracne can have other
12 systemic manifestations, but I have not observed systemic
13 manifestations without chloracne.

14 MR. HEINEMAN: Thank you, sir. That's all the
15 questions I have of Dr. Suskind at this time, Your Honor.

16 THE COURT: Mr. Carr.

17 MR. CARR: Yes, Your Honor

18 CROSS EXAMINATION

19 BY MR. CARR:

20 Q. Dr. Suskind, you first, of course, had a connection
21 with or an employment opportunity with Monsanto back in 19 --
22 October of 1949, that was your first connection, was it not,
23 sir?

24 A. No, sir.

1 Q. And you had an earlier connection?

2 A. No, sir.

3 Q. When was your earlier connection?

4 A. I was not employed by Monsanto, sir, in 1949.

5 Q. You were used by Monsanto and paid by Monsanto to
6 examine certain of their employees, weren't you, sir?

7 A. No, sir.

8 Q. And didn't you do that in October of '49?

9 A. I was not employed or paid by Monsanto for that
10 examination.

11 Q. Weren't you --

12 A. I think I made it clear earlier.

13 Q. Didn't you examine people back in '49 for Monsanto?

14 A. The Kettering Laboratory --

15 Q. Excuse me, did you examine the people in 1949 for
16 Monsanto, Dr. Suskind?

17 A. I examined the people in 1949 at the request of the
18 director of my laboratory.

19 Q. Did you do that for Monsanto?

20 A. It was done at the request of Monsanto.

21 Q. You were working, you were an employee of a
22 corporation, were you not, sir?

23 A. No, sir.

24 Q. Kettering Laboratory Institute?

1 A. The Kettering Laboratory is an academic unit of a
2 medical school, it's not a corporation.

3 Q. How about the medical fund?

4 A. Excuse me, I don't hear you.

5 Q. The Medical Fund Center?

6 A. The Medical Center Fund?

7 Q. Yes.

8 A. The Medical Center Fund is a fund which is -- and
9 the Medical Center Fund was not involved in 1949.

10 Q. I understand that, Doctor, but my question --

11 A. The Medical Center Fund was created much later.

12 Q. Is the Medical Center Fund of Cincinnati a
13 corporation?

14 A. The Medical Center Fund is a corporation.

15 Q. Do you own any part of that or have you owned any
16 part of that?

17 A. No, I don't own any part of it.

18 Q. Have you in the past, sir?

19 A. No, sir.

20 Q. Who does own the stock in that corporation?

21 A. There is no stock in the corporation. The
22 corporation is a non-profit organization, and it is a -- it's
23 used as a business function of the Clinical Departments of
24 the university.

1 Q. All right. Now, Doctor, to get back to my
2 question, I didn't say that you were an employee of
3 Monsanto.

4 A. I thought you did, sir.

5 Q. Excuse me, Dr. Suskind. I asked you whether or not
6 you were employed by Monsanto, that is, used, utilized,
7 engaged to perform some work, were you employed by Monsanto
8 in '49 to examine some of their employees?

9 A. No, sir.

10 Q. Were you not used by Monsanto for that purpose,
11 sir?

12 A. No, sir.

13 Q. Did you not provide them services, sir, your
14 services?

15 A. No, sir.

16 Q. Did you not make a report upon after examining
17 these employees, sir?

18 A. We made a report.

19 Q. And that you were part of that we, weren't you,
20 sir?

21 A. I was part of the -- I was one of the authors of
22 that report.

23 Q. You were one of the ones that examined these
24 workers, weren't you, sir?

1 A. I was one of the ones -- I was one of the
2 physicians who examined these workers.

3 Q. And you were performing a service for Monsanto,
4 were you not, sir?

5 A. The University or the Kettering Laboratory was the
6 group performing the services, and I was working for the
7 Kettering Laboratory.

8 Q. Were you part of the group, Dr. Suskind, used by
9 Monsanto that performed a service for Monsanto?

10 A. I was part of a group that was -- that was directed
11 by the Kettering Laboratory to examine employees at the
12 request of Monsanto.

13 Q. And, Doctor, you did indeed examine these employees
14 at the request of Monsanto, did you not, sir?

15 A. I examined them at the request of Dr. Robert A.
16 Kehoe.

17 Q. Who was your supervisor and who received a request
18 from Monsanto?

19 A. Yes, sir.

20 Q. And your employment concern or agency or entity was
21 paid by Monsanto for these examinations that you and others
22 performed, isn't that correct, sir?

23 A. No, sir, I was not paid directly by Monsanto.

24 Q. Doctor, did you get your salary from the agency

1 that was paid by Monsanto?

2 A. I got a standard salary from the university no
3 matter what I did.

4 Q. I understand that, Doctor, but my question is did
5 you get paid by an entity that performed a service for
6 Monsanto?

7 A. I was paid by the University of Cincinnati.

8 Q. Doctor, you understand my, none of my employees
9 work directly for any of my clients. They get paid, however,
10 from the funds that I receive from my clients, and that is
11 the situation that existed with you, is it not, sir?

12 A. No, sir.

13 Q. You were an employee of a company or an entity, if
14 you will, that got paid by Monsanto, weren't you, sir?

15 A. I was paid by the University of Cincinnati.

16 Q. I understand that, sir, but they get their funds
17 and in part got their funds in this instance from Monsanto
18 for that particular service that was performed by Monsanto?

19 A. They did, but I didn't receive a portion of that
20 money. I was on a straight salary, sir.

21 Q. You understand when I pay my telephone bill that
22 while I cannot trace the dollar that I gave to the telephone
23 company to an employee of that telephone company, I am in
24 fact paying a part of that employee's wages; you understand

1 that, don't you, sir, when I pay my telephone bill. You do
2 understand that, don't you, sir?

3 A. I am not altogether sure I understand what you're
4 saying, Mr. Carr.

5 Q. Do you believe that when you pay your telephone
6 bill you are paying in part, part of the wages of the
7 employees, John Jones for AT&T gets paid. Were you not
8 paying part of his wages, sir?

9 A. That's possible.

10 Q. Doctor, when you -- Kettering did receive money, it
11 didn't perform this service free for Monsanto, did it, sir?

12 A. Yes.

13 Q. They performed it free?

14 A. Sorry, I don't--

15 Q. It was paid for the examination that its team of
16 doctors, you included, performed for Monsanto, was it not,
17 sir?

18 A. The Kettering Laboratory was paid for the
19 examination, but I didn't receive any of that money, sir.

20 Q. Dr. Suskind, I understand what you are saying, but
21 in point of fact, you received part of all of the monies
22 that's paid to the University of Cincinnati, whether it comes
23 from the legislature, from tuition or from fees charged to
24 clients or people that are treated in the center, are you

1 not, sir, indirectly, Dr. Suskind?

2 A. Whether I was --

3 Q. Dr. Suskind, do you understand my question?

4 A. I do--

5 Q. Do you really need -- Dr. Suskind, you are an
6 intelligent person, I know you understand what I'm saying.
7 Do you not agree that when you pay a dollar to the telephone
8 company part of your dollar goes to each of the employees of
9 that telephone company as part of their wages?

10 A. That's possible.

11 Q. Some small fraction, sir?

12 A. That's possible.

13 Q. Not possible, it occurs, it is a fact, is it not,
14 sir?

15 A. I said it was possible.

16 Q. Doctor, and I'm suggesting to you not that it's
17 possible, that it does in fact occur?

18 A. That's your opinion, sir.

19 Q. Doctor, I'm asking you for your agreement to that
20 statement?

21 A. I don't agree with how you have phrased it, cause
22 it does not apply, and I want the Court to understand that it
23 does not apply to my being employed by the Kettering
24 Laboratory.

1 Q. Doctor, I'm not asking you that question at this
2 point in time. I'm now asking you a simple question, which I
3 think you understand clearly, but you're attempting to avoid
4 the effect of it. Ever dollar that I receive from a client
5 of mine, a portion of that dollar goes to the employees that
6 I pay wages to, isn't that correct so far as you know, Dr.
7 Suskind?

8 A. That might be so. I don't know how you pay your
9 employees.

10 Q. Doctor, I take the money that I get and put it in
11 the bank, and then when the bills come up, I write checks on
12 that money that's in the bank just as you do, just as the
13 University of Cincinnati does, just as Kettering does, and
14 the money is all mingled when it gets in the bank, it's not
15 separate one part from Monsanto and one part from tuition and
16 one part from taxes or whatever or from gifts or donations.
17 It's all mingled there together, and every employee gets a
18 part of that money, and you got a part of the money, even
19 though it might be small and that's the only point that I
20 wish to make, Dr. Suskind, do you not, sir?

21 A. The answer is no, and may I explain?

22 Q. Doctor --

23 A. May I explain?

24 Q. Not at this point in time, Doctor.

1 A. Then I don't think you are allowing me to answer
2 your question.

3 Q. Dr. Suskind, you may well be correct, but if I'm
4 not allowing you to do it, Mr. Heineman has an open
5 opportunity, he can take a week to give you an opportunity to
6 explain it fully, but at this point in time I would like for
7 you to answer my question. Dr. Suskind, do you not agree,
8 sir, that Monsanto paid the University of Cincinnati or
9 Kettering Laboratory or the Institute for the services that
10 this team rendered?

11 A. They did.

12 Q. And do you not agree that you got paid along the
13 way your monthly or yearly wages from the University of
14 Cincinnati or the Kettering Institute or whatever the
15 laboratory was that was involved?

16 A. I got paid by the university.

17 Q. Yes.

18 A. My salary did not have to come at all from the
19 Monsanto income.

20 Q. Doctor, does the Kettering Institute supply excess
21 funds to the University of Cincinnati when it earns money?

22 A. I'm not sure I understand the question.

23 Q. Does the Kettering Institute, is it completely
24 controlled and operated, is it a subdivision of the

1 University of Cincinnati?

2 A. It is an academic unit of the College of Medicine.

3 Q. And it's completely owned and controlled, the
4 income that goes to the Kettering Institute in fact is
5 University of Cincinnati income, is it not, sir?

6 A. Yes, sir.

7 Q. Yes. And you were paid from the University of
8 Cincinnati income, weren't you, sir?

9 A. Yes, sir.

10 Q. Yes. And, therefore, part of the funds that went to
11 Kettering went to the University of Cincinnati and part of it
12 came back to you, didn't it, sir?

13 A. I'm not sure it did. I can't tell you, because I
14 happen to have been the director of that institute for 16
15 years, and I know how monies are paid to the members of the
16 faculty and the members of the faculty are -- get their
17 income from various kinds of sources, including the state,
18 and from research grants that they generate, and there is a
19 direct relationship between what they may elicit in the way
20 of grants, but in this instance, in this instance in 1949 I
21 was on a straight salary which came from the Kettering
22 Laboratory, and I don't know whether or not any of that
23 Monsanto money came to me, but I would have gotten an income
24 anyway.

1 Q. Doctor, nobody suggested that you would not, and
2 you're so defensive on this point. Are you-- Do you think
3 that by the questions that I'm asking you that I am trying to
4 suggest to you or to the jury that your opinions at that
5 point in time were colored by the fact that Monsanto was
6 utilizing your services?

7 A. No, sir.

8 Q. Because I assure you I'm not directing the question
9 toward that point. It might be a factor in your mind, sir, but
10 it's not a factor in my mind. I'm simply trying to point
11 out, sir, to you and asking you is it not a fact that you
12 have a connection with Monsanto indirect, direct, subliminal,
13 hidden, overt, open, whatever, you had a connection that
14 started back in 1949, did you not, sir?

15 A. That is true.

16 Q. That was the question that I asked you.

17 A. You were indicating that I was paid directly by
18 Monsanto, and I was not.

19 Q. Doctor, I was not indicating that you were paid
20 directly by Monsanto?

21 A. That's what I understood.

22 Q. I never said that to you, I never asked you the
23 question. All I did was try to point out that just like the
24 telephone employee gets part of the money from the bills that

1 we pay so do you get part of your money from the income that
2 University of Cincinnati may have.

3 Now, Doctor, the connections that you had with
4 Monsanto that dated back to 1949 have continued. You have
5 been of further service to Monsanto over the years up to the
6 present time, have you not, sir?

7 A. In an interrupted fashion.

8 Q. Yes. And you have been utilized most recently in
9 the so-called Suskind Herzberg morbidity study, have you not,
10 sir?

11 A. We conducted a morbidity study at my request.

12 Q. Is the answer to my question, Dr. Suskind, that you
13 have been utilized, yes, you have been utilized by University
14 -- by Monsanto for the morbidity study?

15 A. The answer is no, and I'll explain why.

16 Q. Doctor, were you working for or were you the
17 director, one of the -- were you not the principal
18 investigator under the Medical Center Fund of Cincinnati in
19 1979?

20 A. Principal investigator of what, sir?

21 Q. Of the morbidity study, sir, that took place in
22 1979 and thereafter?

23 A. Yes, I was.

24 Q. And were you not and did not Monsanto enter into a

1 contract with the Medical Center Fund of Cincinnati in July
2 of '79, sir?

3 A. Yes, sir, to pay part, to pay part of the cost.

4 Q. How much of the cost, sir?

5 A. Part of the cost.

6 Q. How much is part of the cost?

7 A. I believe if I'm not mistaken, it was about
8 \$170,000 after the fact.

9 Q. It paid \$170,000 after the work was done?

10 A. Well, no. We underestimated the budget for the
11 conduct of the study and the analysis of the data, so that
12 originally we got \$122,000 and then later on we billed
13 Monsanto for the extra amount that we were spending or had
14 spent on the analysis.

15 Q. What is that extra amount, Doctor?

16 A. That was about 50 something thousand dollars I
17 can't remember the exact--

18 Q. The total cost of this study was approximately 172
19 to \$175,000?

20 A. It was not, sir.

21 Q. Well, what was the total cost Doctor?

22 A. Well, I can't tell you exactly what the total cost,
23 but Monsanto --

24 Q. My question is what was the total cost of this

1 project, sir? You said it was not 175. If it was not that,
2 what was it in your best judgment, sir?

3 A. If -- I really can't tell you, and I'm not about to
4 guess, but I can tell you what the other costs were.

5 Q. Was it more than --

6 A. -- And who supported them.

7 Q. Was it more than \$175,000?

8 A. Oh, it was a great deal more than \$175,000. You
9 can't do, and you know this --.

10 Q. Excuse me, Doctor--

11 A. You can't do a study of this size and --

12 MR. CARR: Your Honor, I wonder if you would ask
13 the witness to stop talking while I'm asking the questions.

14 THE COURT: Doctor, please just refrain, keep your
15 answer to the question. I don't believe the question
16 encompassed what you were talking about.

17 THE WITNESS: I shall attempt to do so, Your Honor.

18 Q. Doctor, was there a budget prepared prior to the
19 time the study was started?

20 A. A budget was prepared for the carrying out of the
21 study in West Virginia for the clinical examination.

22 Q. And was that budget at that time \$122,000?

23 A. It was.

24 Q. And excuse me --

1 A. We estimated that.

2 Q. Sir?

3 A. We estimated that, it was an estimate.

4 Q. Doctor, every budget is an estimate by definition.

5 Doctor, did you not have a budget at that time of \$122,000?

6 A. Simply for the services that were going to be
7 performed.

8 MR. CARR: I wonder, your Honor, if you would ask
9 the witness to answer my question.

10 THE COURT: Doctor, I want -- I want you to listen
11 to the question carefully. If it's a precise question, asks
12 for a particular thing or a couple particular things, answer
13 those particulars only, if you would. The attorneys have the
14 right to follow up with questions and supplement the answers
15 if they think that something needs to be added to it. The
16 attorney for Monsanto has the right in redirect examination
17 to add to anything that's been testified to as far as
18 questioning is concerned and amplify or give you an
19 opportunity to explain further if he in his professional
20 judgment feels that that is required, but when you're asked a
21 question, please keep your answer restricted to the question
22 only.

23 THE WITNESS: Thank you.

24 THE COURT: Mr. Carr, you may proceed.

1 Q. Doctor, was the budget for this study that was to
2 take place in '79 at Nitro, West Virginia, was the budget
3 \$122,000?

4 A. No, sir.

5 (Plaintiffs' exhibit 1726 marked for
6 identification.)

7 Q. Doctor, I hand you what's been marked Plaintiff's
8 Exhibit 1726 and ask you to look at it please. Doctor, does
9 this exhibit, does it contain the signature of Frank Kinetti,
10 the executive director of the Medical Center Fund of
11 Cincinnati?

12 A. Yes, it does.

13 Q. Does it contain the signature of Dr. Raymond R.
14 Suskind, the director of the Department of Environmental
15 Health for the University of Cincinnati dated July 18, 1979?

16 A. Yes, it does, sir.

17 Q. Does it contain the signature of somebody, I can't
18 make it out, from the Department of Environmental Health for
19 Monsanto?

20 A. Yes, it does.

21 Q. Does it describe on the first page that the fund
22 shall perform under the principal investigator's supervision
23 all of its obligations under this agreement for a total fee
24 amount estimated in the attachment captioned Budget, Monsanto

1 study to be \$122,526?

2 A. Yes, it does.

3 Q. And was that the budget for Monsanto study, was it
4 \$122,526 as described in this document?

5 A. It was for this aspect of the study.

6 Q. Doctor, was \$90,000 of that budget paid by
7 Monsanto?

8 A. Yes, it was.

9 Q. And was Monsanto obligated to pay additional
10 expenses as they may occur, reasonable expenses that may
11 occur, actually incurred by the fund " above the estimated
12 budget amount"?

13 A. Yes, they were.

14 Q. And did Monsanto, in fact, pay additional sums
15 above the estimated budget amount?

16 A. Yes, they did, but that was not the total cost of
17 the study.

18 Q. Doctor, my question was was there a budget of
19 \$122,000 set up for this study?

20 A. For this part of the study, yes.

21 Q. And your answer was that there was no budget so set
22 up and this document shows that there was a budget, doesn't
23 it, Doctor?

24 MR. HEINEMAN: Objection, Your Honor,

1 mischaracterization of the witness' testimony.

2 THE COURT: Objection is overruled.

3 Q. Doesn't this document describe a budget for this
4 clinical study involving approximately 500 past and present
5 employees?

6 A. You asked me--

7 Q. Doctor, would you answer my question please, sir.
8 Doesn't this document describe the budget for the clinical
9 study involving these employees?

10 A. It -- yes, it does, but --

11 Q. All right. Now, Doctor --

12 A. And I would like to explain, because if you leave
13 this as it is, that is not the whole story, and if --

14 Q. Doctor, it may not be the whole story--

15 A. If I may, I would like to explain further.

16 THE COURT: Doctor, just the answer (the questions as
17 they're asked. Mr. Carr, you may proceed.

18 Q. Doctor, it may not be the whole story, but the only
19 part of the store that I'm interested in at this time is
20 whether or not there was a budget described for this study
21 and whether or not that budget was at that time \$122,000?

22 A. It was indeed.

23 Q. Yes.

24 A. But that was wasn't the whole budget.

1 Q. That may not be the whole budget, there may be
2 thousands of more budget, but it is the budget described at
3 that time in this document for that study, isn't it, sir?

4 A. It was Monsanto's part of our cost.

5 Q. No, the \$90,000 was Monsanto's cost?

6 A. No, the total amount described in here, the
7 \$122,000 was Monsanto's share of the cost, and this
8 represents Monsanto's budget or the budget contributed by
9 Monsanto, but that was not the total budget for the study.

10 Q. Well, Doctor, doesn't this document say that the
11 total cost over and above this is going to be paid by
12 Monsanto as well?

13 A. For Monsanto's share of the --

14 Q. Doctor, it doesn't say that. It says upon receipt
15 of said report Monsanto will also pay the fund for reasonable
16 expenses connected with this performance under this agreement
17 actually incurred by the fund above the estimated budget
18 amount, does it not so state?

19 A. It does indeed, but that's still Monsanto's share
20 of the total cost.

21 Q. Oh, Doctor, where does it say that that's
22 Monsanto's share. It says Monsanto is going to pay the fund
23 for reasonable expenses connected with the fund's performance
24 under this agreement. Isn't that exactly what it says?

1 A. That is what it says, but it's still Monsanto's
2 part of the study.

3 Q. Well, the way I read this is --

4 A. If you will look at my paper --

5 Q. Doctor Suskind, if you don't mind, doesn't this
6 contemplate that Monsanto is going to pay for all expenses
7 connected with the performance of the agreement?

8 A. All expenses that we expected Monsanto to pay, but
9 there were --.

10 Q. Doctor, excuse me--

11 A. Other expenses like my salary.

12 Q. Would you answer my question please, sir. Doesn't
13 it say upon receipt of said report Monsanto will also pay the
14 fund for reasonable expenses connected with its performance
15 under this agreement?

16 A. For Monsanto's part of the budget.

17 Q. Doctor, you're adding some words in there. Where
18 are the words for Monsanto's part, where does it appear in
19 there?

20 A. We didn't have to say that.

21 Q. Excuse me, Doctor. Does it say it in there
22 anyplace, sir?

23 A. It doesn't say it in there, but it doesn't have to
24 say it.

1 Q. Doctor, were you in the business of giving away
2 services to Monsanto without receiving pay for it?

3 A. No.

4 Q. Doctor, doesn't this--

5 A. This was not a service to Monsanto, sir.

6 Q. Oh, wasn't it a service to Monsanto?

7 A. Oh, no, it wasn't a service to Monsanto.

8 Q. Doctor, if it is not a service to Monsanto, why did
9 Monsanto require you to agree that you would for a period of
10 five years after completion of this report testify in behalf
11 of Monsanto if it wasn't, if this study wasn't a service to
12 Monsanto, why did they put that stipulation in there, sir?

13 A. Simply because we would be able to support and
14 defend anything that we did, which we're doing here today.

15 Q. Indeed, Doctor, and why would Monsanto want you to
16 agree and require before they would pay you this money,
17 require that the principal investigator, that's you, shall
18 cooperate with Monsanto regarding questions or inquiries by
19 third parties to Monsanto relating to this study and shall
20 testify at and participate in proceedings in which Monsanto
21 may be involved and execute and provide affidavits to
22 Monsanto regarding this study. Why, Doctor, would they
23 require you --

24 A. It was in Monsanto's.

1 Q. Excuse me, Doctor, may I finish my question,
2 please.

3 A. I'm asking the question, sir.

4 MR. CARR: Your Honor, would you direct the witness
5 to--

6 THE COURT: Doctor, please wait until the question
7 is finished before you answer.

8 Q. If this was not of a service to Monsanto, this
9 study that you were performing, why would they contractually
10 bind you and obligate you to testify?

11 A. It was in the interest of Monsanto to do that.

12 Q. Indeed it was.

13 A. In their own self interest.

14 Q. Dr. Suskind, that is my point. It was in the
15 interest of Monsanto to have this study performed, it was in
16 the interest of Monsanto to require you to be contractually
17 bound to testify for them, wasn't it, sir?

18 A. It was in their interest that we do this study.

19 Q. Yes, indeed, Doctor. Now, and you have in fact
20 honored the contractual obligation that you signed up to in
21 1979, and you have in fact testified in behalf of Monsanto in
22 Nitro, West Virginia, where those six workers lost their
23 cases, did you not, sir?

24 A. This was outside of the contract. If you look at

1 the contract, you will see that when we testified, it was
2 over five years.

3 Q. Oh, it was over five years, sir?

4 A. Yeah, we did it in 1979, and I testified in late
5 '84.

6 Q. Doctor, when did the final report of your study, --

7 A. '85.

8 Q. -- Come out? Sir, when did it come out?

9 A. The --

10 Q. Your final report of the study, when did it come
11 out?

12 A. If you're thinking about the paper --

13 Q. When did the final report come out?

14 A. The final report was in 19 -- if you're talking
15 about --

16 Q. Doctor--

17 A. -- The publication, it was published in '84 and
18 that was considered the final report.

19 Q. All right. Doctor, what is five years from 1984,
20 what year is that, sir, it's 1989, isn't it, sir?

21 A. Yes, sir.

22 Q. Doctor, would you look at the contract, and doesn't
23 it say that you're obligated for a period of five years after
24 the final report to testify in behalf of Monsanto? Page 2,

1 sir.

2 A. If you will look carefully, it doesn't say
3 obligated.

4 Q. Doctor, my question is doesn't it --

5 A. You said obligated, and I object to it because it
6 doesn't say obligated. May I read it?

7 Q. Doesn't it say, sir, that you shall for five years
8 after Monsanto receives the final report of the study, the
9 fund and the principal investigator shall cooperate with
10 Monsanto and such cooperation shall not be unreasonably
11 withheld regarding questions or inquiries by third parties to
12 Monsanto relating to the study and the principal investigator
13 shall on a mutually acceptable basis with Monsanto, a,
14 testify at and participate in proceedings in which Monsanto
15 may be involved, and, b, execute and provide affidavits or
16 similar statements regarding matters relating to the study.
17 Doesn't it say that, sir?

18 A. It says that and it says mutual --

19 Q. Five years, Doctor--

20 A. On a mutually acceptable basis.

21 MR. CARR: Your Honor, would you direct the witness
22 to answer the question.

23 THE COURT: Doctor, that was a precise question.
24 You answered it. Stop when you have fully, when you have

1 answered the question as it is given to you in the amount of
2 precision it's given to you.

3 Q. Doctor, the five years --

4 THE COURT: Wait a second, wait a second. That goes
5 for both attorneys. Go ahead.

6 Q. Doctor, the five year period ends in 1989, doesn't
7 it, sir?

8 A. If you're considering the publication as the final
9 report.

10 Q. Isn't that what you said it was, sir, just a moment
11 ago?

12 A. If it would be considered the final report.

13 Q. Isn't that what you said just a moment ago, Dr.
14 Suskind?

15 A. I said if it could be considered the final report.

16 Q. Did you consider it the final report? Is there some
17 other final report yet to come?

18 A. There are other, other materials from the data that
19 we got that should be --

20 Q. Then you may be obligated ad infinitum then to
21 testify?

22 A. No, not at all, sir.

23 Q. Doctor, are you-- Is this contractual provision
24 that you're-- for five years after Monsanto receives the

1 final report, the earliest final report would be the one in
2 1984, would it not, sir?

3 A. It could be considered that.

4 Q. And your testimony at Nitro, West Virginia you were
5 testifying in behalf of Monsanto and against those workers,
6 were you not, sir?

7 A. I was testifying on behalf of my study, sir.

8 Q. Doctor, were you testifying at Monsanto's request?

9 A. I was testifying at Monsanto's request.

10 Q. Did you appear in --

11 A. -- In the interest of my study.

12 Q. Dr. Suskind, did you appear in Charleston, West
13 Virginia and did you go there from Ohio without a subpoena?

14 A. Yes, indeed.

15 Q. Are you appearing here today, sir, in this week
16 without a subpoena?

17 A. I believe so.

18 Q. And did you testify -- did Monsanto put you on the
19 stand, their attorneys and ask you questions, direct
20 questions on direct examination at Nitro, West Virginia?

21 A. Yes.

22 Q. And did the attorney for the workers at Nitro, West
23 Virginia, did they cross-examine you on those statements that
24 you made, sir?

1 A. Yes, he did.

2 Q. Did you testify, therefore, were you a witness for
3 Monsanto?

4 A. I was a witness for the defendant, an expert
5 witness for the defendant.

6 Q. Is that Monsanto, sir?

7 A. Yes, sir.

8 Q. Did you testify with regard to this study of yours
9 that was conducted of those workers, did you testify with
10 regard to that study, that morbidity study?

11 A. Both the mortality and the morbidity study.

12 Q. My question now pertains just to the morbidity
13 study.

14 A. Yes, I did.

15 Q. And have you, did you execute a similar contract or
16 document for the study performed at the Krummrich plant, sir?

17 A. Will you repeat the question?

18 Q. Did you execute a similar contract or agreement
19 covering the study performed at the Sauget, Illinois plant?

20 A. Yes, we did. It wasn't a study, it was a health
21 examination.

22 Q. Doctor, are you obligated to appear and testify in
23 behalf of Monsanto with regard to the Krummrich health study
24 report for five years?

1 A. Not having looked at the contract, sir, I really
2 don't remember. You will have to refresh my memory.

3 Q. Doctor, don't you know whether or not you're
4 obligated to testify against the Sauget, Illinois workers
5 should they have compensation claims or other claims to be
6 brought, don't you know that, sir?

7 A. Testify against the --

8 Q. For Monsanto and against them, sir.

9 A. Not necessarily.

10 Q. Not necessarily. Well, you're not necessarily
11 required to go to Charleston, West Virginia?

12 A. That's right.

13 Q. But you did go, didn't you, sir?

14 A. Right, in defense of my study.

15 Q. Excuse me, Dr. Suskind. Did this contract not say
16 that you were to go?

17 A. Do you have the contract before you, sir? Do you
18 have the Krummrich contract.

19 Q. You have it in front of you, sir.

20 A. I don't have it.

21 Q. Exhibit 1726, sir.

22 A. This is not the Krummrich contract.

23 Q. Doctor, I'm not talking about--

24 A. You asked me about the Krummrich contract.

1 Q. I'm talking about Nitro, West Virginia, about
2 Charleston, West Virginia, where you testified.

3 A. You asked me about the Krummrich contract, and I
4 said I didn't remember what it contained.

5 Q. Dr. Suskind, I left that and asked you did you not
6 testify at Charleston, West Virginia?

7 A. I sure did.

8 Q. Against the workers, sir, and for Monsanto, sir?

9 A. No, it was in the interest of my study.

10 Q. Did you appear as a witness there and were you
11 listed in the trial transcript as a witness appearing in
12 behalf of Monsanto, sir?

13 A. I did.

14 Q. Yes. Now, Doctor, the -- you also testified in
15 behalf of Monsanto as a witness in 1956 when certain workers
16 at Monsanto wanted to get workmen's compensation, did you
17 not, sir?

18 A. I was asked by a law firm representing Monsanto if
19 I would come to Charleston, West Virginia on that case.

20 Q. Having said that, Doctor, would you answer my
21 question, sir?

22 A. What was your question, Mr. Carr?

23 Q. Would you read the question to the witness please.

24 (Court reporter read back the last question.)

1 A. I appeared at the hearing.

2 Q. Could you answer my question, sir? Did you testify
3 in behalf of Monsanto, did you appear as a witness in behalf
4 of and did you testify in behalf of Monsanto at the workmen's
5 compensation hearing held, in which the workers who were
6 exposed to 2,4,5-T and had certain disabilities for which
7 they sought workmen's compensation, did you not appear at
8 that hearing and testify so that they would not get workmen's
9 compensation in behalf of Monsanto?

10 A. No, sir.

11 Q. Did you testify in behalf of Monsanto, sir?

12 A. I did, but you indicated so that they would not get
13 workmen's compensation, and that is false.

14 Q. Doctor, wasn't that the purpose of the hearing, so
15 that the workers would get workmen's compensation?

16 A. No, sir.

17 Q. What do you devine the purpose of the workmen's
18 compensation hearing is for if not so as to determine whether
19 or not the workers shall get workmen's compensation? Do you
20 know of any other reason that it's held for, sir?

21 A. But that wasn't my reason for being there.

22 Q. Doctor, I'm not asking your reason. I'm asking
23 about why, about Monsanto using you, sir. They used you to
24 -- I don't care about your particular motives, what your

1 motives are are immaterial, sir. It's the motives of Monsanto
2 that is material in this case. You were used by Monsanto in
3 that case for the purpose of defeating a workmen's
4 compensation claim brought by those workers, were you not,
5 sir?

6 A. No, sir.

7 Q. Were you used by Monsanto?

8 A. I said I was not used by Monsanto.

9 Q. Did you testify voluntarily in behalf of Monsanto?

10 A. I testified voluntarily.

11 Q. Did you testify, sir, as to whether or not those
12 workers had disability resulting from their exposure to
13 2,4,5-T?

14 A. After examining them at that hearing, yes, I did
15 testify.

16 Q. Doctor, didn't you testify as to what you found in
17 workers at Monsanto in addition to just those that you
18 examined at that hearing?

19 A. The questions were in some instances general, and I
20 had to ask them -- I had to answer them on the basis of my
21 general experience.

22 Q. Doctor, the purpose of that hearing was to
23 determine whether or not these workers at Monsanto were going
24 to get workmen's compensation, isn't that correct, sir?

1 A. For the complaints at that time.

2 Q. And weren't there at that time sixteen workers
3 involved, sir?

4 A. I can't remember the number, sir.

5 Q. Well, I have the transcript from the workmen's
6 compensation hearing here, and it's described by you on Page
7 11, counsel, as 16 claimants, is that not correct sir,?

8 A. If that's the way the record reads, it must be
9 correct.

10 Q. Doctor, you have now in this case, you have
11 testified -- did you testify against -- in behalf of Monsanto
12 and against the workers at any places other than the
13 workmen's compensation case in 1956 and in the case where
14 these workers were seeking damages for wilful impairment of
15 their health by Monsanto in Nitro in 1985? Did you testify
16 any other places in addition to those two, sir?

17 A. I don't believe so.

18 Q. And then this is the third time and you are
19 testifying here this past two weeks again at the request of
20 Monsanto, are you not, sir?

21 A. I am, sir.

22 Q. Now, Doctor, the work that you did in 1949 this was
23 at a time when you first -- probably was your first
24 connection with 2,4,5-T, wasn't it, sir, or dioxin and you

1 didn't even know there was dioxin at that time, isn't that
2 correct, sir?

3 : A. It was my first experience with a group exposed to
4 whatever these workers were exposed to.

5 Q. And, Doctor, at that time -- you've already
6 testified to the report that -- of your examination that was
7 conducted in October of 1949, that is, Defendant's 1694, you
8 did make that report to Monsanto, didn't you, sir?

9 A. The report was made by Dr. Ash and myself.

10 Q. Dr. Ash was an internist, and you were a
11 dermatologist at that time?

12 A. Yes, sir.

13 Q. And in addition because you had no expertise in the
14 field of neurology or neuropathology you engaged the services
15 of a neurologist and a neuropathologist as well, did you not,
16 sir?

17 A. Yes, sir.

18 Q. Now, Doctor, at that time insofar as the exposures
19 were concerned you learned then as far back as 1949 that an
20 area outside of the building at that Nitro plant was
21 contaminated, didn't you, sir?

22 A. From the workers' reports we heard that some of the
23 material from inside the building got outside.

24 Q. Doctor, it wasn't just --

1 A. We didn't know how extensive it was.

2 Q. Doctor, what you said was the contents were
3 scattered throughout the interior of the building as well as
4 over the surrounding terrain and structures, did you not,
5 sir?

6 A. On what page are you reading from, sir?

7 Q. Doctor, do you not recall it, sir?

8 A. Yes, on Page 1 it says exactly as you have read it.

9 Q. Doctor, it was a fine black powder that was thrown
10 around, wasn't it, sir?

11 A. It was variously described as a fine black powder
12 or a brown material.

13 Q. And, Doctor, how -- it was a wide area that was
14 contaminated outside the building, wasn't it, sir?

15 A. I don't know. There is no statement in this report
16 that describes a wide area.

17 Q. Doctor, you made more than one report, didn't you,
18 sir?

19 A. Yes, we did.

20 Q. Sir?

21 A. Yes, we made --

22 Q. Don't you recall describing it in Leon as being
23 over a wide area outside the building?

24 A. I'm not sure I recall that's what I said. If you

1 will give me that statement, I'd be happy to look at it.

2 Q. I didn't make more than one copy. I thought you
3 had one. This is the-- I better have this marked.

4 (Plaintiffs' Exhibit 1727 marked for
5 identification.)

6 Q. Doctor, handing you Plaintiffs' Exhibit 1727, you
7 recognize that as the report you made at the conference at
8 Leon in January, 1978, do you not, sir?

9 A. Yes, indeed, this is it.

10 Q. Appearing on the first page it describes, does it
11 not, sir, a release valve open and the contents of the vessel
12 was discharged into the interior of the building and over a
13 wide area outside of the building, does it say that, sir?

14 A. It says that, sir.

15 Q. Yes. Now, Doctor, this material that was spewed
16 over a wide area outside of the building, in fact, affected
17 people not even working for or employed at Monsanto, did it
18 not, sir?

19 A. It did not, sir.

20 Q. Doctor, could you turn to the exhibit that you have
21 on your original report, Defendant's Exhibit 1694 on Page 2.
22 It's your original -- do you have that report, sir?

23 A. I do.

24 Q. Does it not say, the second sentence on that page,

1 in addition a man who purchased a truck, which was in the
2 vicinity of Building 41 at the time of the accident and his
3 child, both of whom had ridden in the vehicle, developed
4 cutaneous symptoms. Does it say that, sir?

5 A. It does indeed.

6 Q. And, Doctor --

7 A. That does not indicate wide area. The truck
8 happened to be parked outside Building 41.

9 Q. Doctor, the wide area now was the question that I
10 asked you a couple of questions before. The wide area is the
11 words you used to describe the extent of the contamination.
12 The question I'm asking at this point in time is weren't
13 others affected in addition to the workers, and you said no,
14 they weren't, and my question to follow up on that, sir, is
15 here was a man who bought a truck that was in the vicinity
16 and his child, neither of whom are workers, sir, and they
17 were affected, were they not, sir?

18 MR. HEINEMAN: Objection, your Honor, to the form
19 of the question. I think the witness' characterization of it
20 was correct.

21 THE COURT: Objection is overruled.

22 Q. They were affected, weren't they, sir?

23 A. They were affected by the --

24 Q. Were they affected, Dr. Suskind?

1 A. Yes, they were.

2 Q. Were they affected by the contaminant that was
3 spread, spewed, scattered outside of the building?

4 A. Yes, they were.

5 Q. And were they affected by contaminant that got on
6 the truck that was outside the building?

7 A. Apparently.

8 Q. Did the child get chloracne just by riding in the
9 truck?

10 A. I don't know how the child got chloracne, sir.

11 Q. Doctor, didn't you say that the child got it after
12 he had ridden in the vehicle? Aren't those your words and
13 not mine, sir?

14 A. But he could have been gotten it by contact with
15 his father's clothes, it could have gotten in a variety of
16 ways, but he had ridden in the truck.

17 Q. Doctor, what you mentioned in this report was not
18 that he got it by contact with his father's clothes or in
19 some other way. The way you suggest that he got it in the
20 report, admittedly you made it at that time and not at the
21 present time, you said both of whom had ridden in the vehicle
22 and they developed cutaneous symptoms, do you not, sir?

23 A. Yes, sir.

24 Q. You meant to relate the cutaneous symptoms to the

1 fact that they had ridden in the vehicle, didn't you, sir?

2 A. As it is stated in this sentence, it would appear
3 so.

4 Q. Yes. And you didn't mean to say by clothing,
5 handling clothing or some other means, did you, sir?

6 A. It's possible that that could have occurred.

7 Q. But you didn't mention that as a possibility at
8 that time, did you, sir?

9 A. No, sir.

10 Q. You didn't mention it as a possibility in 1978, did
11 you, sir?

12 A. If you're referring to the Leon paper, I don't have
13 it here, but I can't see that -- all it says here --

14 Q. Doctor, my question is simple. You didn't mention
15 the handling of the clothing as a possibility in 1978, did
16 you, sir?

17 A. I did not, but it's a possibility, sir.

18 Q. Thank you. Doctor, you've already said that. My
19 question, sir, is you didn't mention that possibility in your
20 report in 1949 nor did you mention it in your report in
21 1978. You have mentioned it as a possibility for the first
22 time in this courtroom, haven't you, sir?

23 A. That's not so. I have mentioned on a number of
24 occasions, including to my own students.

1 Q. Doctor, I can't challenge you on that, can I, sir?
2 You didn't --?

3 A. If you want to, you can.

4 Q. I didn't -- wasn't in one of your classrooms, I
5 don't have any of your students here to verify or to dispute
6 what you say and maybe I should have phrased the questions
7 differently. You didn't mention it in writing at any time in
8 any place other than in '78 and in '49, any possibility that
9 it occurred with the handling of clothing, did you, sir?

10 A. I didn't mention it in any of the writings that you
11 have quoted.

12 Q. Did you mention it in some other writing?

13 A. I have no idea, but it's a possibility, sir.

14 Q. Doctor, indeed we agree it is a possibility and as
15 a matter of fact it is such a possibility that you know that
16 wives who washed the clothing of the men that were in the
17 plant, they, too, got chloracne; you know that also, don't
18 you, sir?

19 A. Some of them did.

20 Q. Yes. And you also know that medical personnel who
21 treated the workers got chloracne as well, didn't they, sir?

22 A. Yes.

23 Q. And you know that men that just casually walked
24 through the plant got chloracne, don't you, sir?

1 A. No, sir.

2 Q. The safety director got chloracne, didn't he, sir?

3 A. He did not casually walk through the plant.

4 Q. Did he work in the plant?

5 A. He worked in the plant, and he was in there, in
6 that building frequently.

7 Q. Well, he was --

8 A. It was not a casual exposure.

9 Q. Well, he was not employed in making the material,
10 was he, sir?

11 A. There were others who were not employed in making
12 the material who also developed chloracne.

13 Q. Dr. Suskind, I'm not asking you about others at
14 this time. My question is and maybe you didn't understand
15 it, my question was directed at that safety director.

16 A. The safety director was not casually exposed, he
17 was heavily exposed.

18 Q. I passed that question already, Doctor. The safety
19 director was not working in making the material, was he, sir?

20 A. No, he was not.

21 Q. All right.

22 THE COURT: Mr. Carr, is this a good point for a
23 short break.

24 MR. CARR: Yes, Your Honor, that's fine.

1 THE COURT: We'll take a short recess at this time
2 and resume testimony. I would remind you you're not to
3 discuss this matter among yourselves or with anyone outside
4 the jury panel or as of yet form any opinions or conclusions
5 about the matters on trial. Court's in recess.

6 (At this time a short recess was taken.)

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

8 Q. Doctor, with respect to the chloracne being caused
9 by the 2,4,5-T, there is no question in you're mind but what
10 the 2,4,5-T to which these various workers at Monsanto were
11 exposed was the cause of their chloracne and the TCDD
12 contaminant thereof, isn't that correct, sir?

13 A. The answer is no.

14 Q. Is there a question in your mind but what the
15 2,4,5-T caused the chloracne, Doctor?

16 A. 2,4,5-T itself does not cause chloracne.

17 Q. 2,4,5-T as made by Monsanto in Nitro, West
18 Virginia, perhaps not made by others but as made by Monsanto
19 in Nitro, West Virginia contains TCDD or it did contain
20 during the period of time it was being manufactured, isn't
21 that correct, sir?

22 A. That is true.

23 Q. And the TCDD in the 2,4,5-T causes the chloracne,
24 doesn't it, sir?

1 A. We assumed that that is the cause of the chloracne,
2 because we know that TCDD can cause chloracne.

3 Q. And you know that if it's in water or if it's in
4 oil or if it's in 2,4,5-T or if it's in 2,4-D or if it's in
5 orthochlorophenol crude, it will cause chloracne, won't it,
6 sir?

7 A. Yes, it will. But you asked me --

8 Q. Now, Doctor--

9 A. May I explain my answer?

10 Q. You may explain it when Mr. Heineman asks you
11 questions, because the point that I wanted to make, Doctor,
12 was that the 2,4,5-T and its constituents, which at Nitro,
13 West Virginia was TCDD, causes chloracne, and I think your
14 answer is, yes, that it does.

15 Now, Doctor, you testified, however, in the
16 compensation hearing in 1956 that in behalf of Monsanto at
17 that time when the workers were trying to get their
18 compensation that 2,4,5-T made in their process did not cause
19 chloracne, didn't you, sir?

20 A. Yes, I did indeed.

21 MR. HEINEMAN: Citation. Excuse me, Your Honor.

22 MR. CARR: Page 32 to 34, Pages 51 and 52 of the
23 workmen's compensation hearing.

24 Q. And, Doctor, the 2,4,5-T made at the Nitro, West

1 Virginia plant contained TCDD, did it not, sir?

2 A. Yes, sir --.

3 Q. Yes.

4 A. But 2,4,5-T alone does not cause chloracne and that
5 was the question. In that --

6 Q. What you said was 2,4,5-T in the final product as
7 made by Monsanto does not cause chloracne. Now the final
8 product made by Monsanto at Nitro, West Virginia contained
9 TCDD, did it not, sir?

10 A. Some of it did.

11 Q. As a matter of fact, what you did, Doctor, you
12 conducted a experiment on human beings under a grant paid by
13 Monsanto, did you not, sir, before the workmen's compensation
14 hearing?

15 A. Yes, we did.

16 Q. Yes. And Monsanto paid for this, and you reported
17 at the workmen's compensation hearing that the 2,4,5-T, the
18 end product 2,4,5-T, does not cause chloracne, didn't you,
19 sir?

20 A. We did indeed.

21 Q. Yes. And --

22 A. And that's the truth.

23 Q. And you knew in your studies, however, that the
24 2,4,5-T made by Diamond Alkali did not cause chloracne, isn't

1 that correct, sir?

2 A. I don't believe that was the experiment, sir.

3 Q. Doctor, did you not discover that Diamond Alkali
4 2,4,5-T did not cause chloracne?

5 A. No, sir.

6 Q. Have you never discovered that, sir?

7 A. No, sir.

8 Q. Did you not discover that the trichlorophenate,
9 which is part of the Diamond Alkali 2,4,5-T, precursor to the
10 2,4,5-T, does not cause chloracne?

11 A. No, sir.

12 Q. You did not? What did you find with regard to the
13 Diamond Alkali trichlorophenate?

14 A. We found that the Diamond Alkali trichlorophenol
15 caused less, less severe skin reactions than did the Monsanto
16 preparation of trichlorophenol, not 2,4,5-T, and it should be
17 clear, that experiment that we did, sir, which you're
18 quoting, and if you would like to produce it, I can show
19 you--

20 Q. Doctor, if you don't mind, just address your
21 remarks to my question please.

22 A. I am addressing my remarks to your question.

23 Q. Relating to the Diamond Alkali product, sir.

24 A. We did not test Diamond Alkali 2,4,5-T.

1 Q. You tested Diamond Alkali trichlorophenol, didn't
2 you, sir?

3 A. We did indeed.

4 Q. From which 2,4,5-T is made, isn't it, sir?

5 A. Yes assumed that, too.

6 Q. Doctor, could you just answer a question at a time.
7 The trichlorophenol by Diamond Alkali ends up as being a
8 precursor or a pre-product to the 2,4,5-T end product, isn't
9 it, sir?

10 A. That's right.

11 Q. Yes. Just like the trichlorophenol made by
12 Monsanto at Nitro is the precursor, the pre-product to
13 2,4,5-T, correct, sir?

14 A. It's erroneous for you to say that it did not cause
15 chloracne.

16 MR. CARR: Your Honor, would you tell the witness
17 that to just respond to my questions and not talk to me about
18 erroneous.

19 THE COURT: Doctor, that was not in any way a
20 response. Now, I am ordering.

21 THE WITNESS: This is part of my response.

22 THE COURT: Doctor, I am ordering you to answer the
23 question and only the question that's asked, no more and no
24 less. Mr. Carr.

1 MR. CARR: Would you read my last question to the
2 witness.

3 (Court reporter read back the last question.)

4 A. The answer is yes.

5 Q. Yes. And, Doctor, the skin reaction you got with
6 the Diamond Alkali product was not chloracne, was it, sir?

7 A. Yes, it was, sir.

8 Q. Where is it described anywhere, Doctor, in any of
9 your documentation, in any of your reports as chloracne?

10 A. It is described in terms of the pathology, and it
11 indicates that the follicular reactions and the sebaceous
12 reactions were less severe than, less severe than the
13 trichlorophenol which we had from Monsanto.

14 Q. Doctor, do you know whether or not Monsanto -- now,
15 Monsanto got your report in 1953, did they not, sir, as to
16 the experiment that you did on the people that they paid for,
17 these humans that they paid for these experiments?

18 A. About 1954.

19 Q. Well, in '54 they got your report since they paid
20 for it, didn't they, sir?

21 A. Yes, sir.

22 Q. They were aware at that time prior to Vietnam,
23 prior to Agent Orange ever being made, ever going to Vietnam,
24 prior to anything occurring, prior to Lysol being made or

1 anything else that was a process that another chemical
2 company had that produced less severe skin reactions, they
3 knew that, didn't they, sir?

4 A. From the report it would appear that their process
5 produced chloracne.

6 Q. So far as you know, Doctor -- is the answer to my
7 question, yes, that they knew that the Diamond Alkali process
8 produced less severe reactions than their product?

9 A. Yes, the report indicated --

10 Q. Is that a yes to my question, Dr. Suskind?

11 A. If one goes by my report, yes.

12 Q. And, Doctor, did you make some other reports other
13 than what we have here or is this all we've got?

14 A. That's the only report that I made about that
15 experiment.

16 Q. Did you discuss with them, sir, did you bring it to
17 their attention at that time in discussion with the corporate
18 officers or their employees or their managers or their
19 product people or anybody, did you bring it to their
20 attention back in 1954 that the Diamond Alkali process was
21 not as contaminated with the acnegenic agent as the Monsanto
22 process, did you bring that to their attention?

23 A. Yes, sir.

24 Q. Did you discuss it with them forcefully, Dr.

1 Suskind, as you are capable of doing?

2 A. I can't remember how we discussed it, but there was
3 a conference about it.

4 Q. They were fully aware of it, they can't claim that
5 they didn't know the significance of what you were telling
6 them?

7 A. I believe they should have known.

8 Q. Do you know whether or not Monsanto at any time --
9 first of all, do you know that TCDD content of the Agent
10 Orange manufactured by Monsanto that was shipped to Vietnam,
11 do you know how many parts per million that 2,4,5-T
12 contained in the mid sixties?

13 A. I do not, sir.

14 Q. You've never been told that it contained 55 parts
15 per million of --

16 MR. HEINEMAN: Objection, Your Honor. May counsel
17 approach the bench?

18 THE COURT: Sure.

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

21 MR. HEINEMAN: Your Honor, first of all, I'm
22 assuming that the continuing objection of counsel to this
23 subject matter of Agent Orange, etc., applies to the
24 cross-examination of this witness.

1 THE COURT: Sure. I think I said it applied to
2 anyone in the case.

3 MR. HEINEMAN: Throughout the lawsuit?

4 THE COURT: Throughout the lawsuit. It hasn't been
5 brought up for a year.

6 MR. HEINEMAN: The second thing is that Mr. Carr has
7 just said that 55 parts per million in the Agent Orange that
8 was shipped to Vietnam. All right. The very exhibits from
9 which Mr. Carr directly obtains that information talk about
10 that being one sample tested out of a whole range of values,
11 and that is absolutely misleading, and I object to it. It's
12 misleading what the evidence is in the case. If the evidence
13 is that the range is from A to Z and covering several years,
14 and there are hundreds of--

15 MR. CARR: I'll be glad to do that.

16 THE COURT: Okay, fine.

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

18 Q. Doctor, counsel has pointed out to me that there
19 was only one sample that had 55 parts per million, but he
20 wants me to include the range, that the range of TCDD content
21 went from 12 to 55 parts per million in the mid fifties. Did
22 you ever know that, sir?

23 A. No, not at all.

24 Q. Now, Doctor, you reported to the workmen's

1 compensation people that you couldn't -- that the only people
2 that -- in effect you reported that the only people that
3 could get chloracne in the process were those that were in
4 the accidental exposure or were those that were in the actual
5 making of the trichlorophenol, did you not, sir?

6 A. If that's what I said and that's accurate, that's
7 what I said.

8 Q. Now, Doctor, at that time, at that very time that
9 you were telling them that workers handling 2,4,5-T, the end
10 product, that the very time you were telling them that your
11 tests showed handling the end product of 2,4,5-T is not going
12 to get chloracne, at that very time you knew that workers who
13 did nothing but handle the end product 2,4,5-T also had
14 chloracne, you knew that, didn't you, sir?

15 A. That's not so. I did not, sir.

16 Q. Dr. Suskind, are you telling us now that in 1956
17 you did not know that workers who did nothing but haul the
18 end product 2,4,5-T got chloracne?

19 A. That is true, sir.

20 Q. That is true what, sir, you're telling us that,
21 sir?

22 A. I am telling you that in 1956 there was no evidence
23 that, that all the people who handled the end product got
24 chloracne.

1 Q. Doctor --

2 A. If you look at my 1953 report, you will see --

3 Q. Dr. Suskind, do you understand my question?

4 A. Well, why don't you repeat it and maybe I will.

5 Q. All the people that handled 2,4,5-T got chloracne?

6 Do you believe I asked you that question?

7 A. Well, I assumed that's what you were saying.

8 Q. Doctor, you said to the --

9 A. Why don't you repeat the question.

10 Q. -- Workmen's compensation, sir, that nobody that
11 handled 2,4,5-T will get chloracne is what you said, and I
12 didn't suggest to you that all the people that handled
13 2,4,5-T will get chloracne nor have you ever suggested that
14 nor has anybody else ever suggested that, because as you well
15 know some people get chloracne when they're exposed to TCDD
16 and others do not, you know that, don't you, sir?

17 A. That's true.

18 Q. Yes. And, Doctor, what you said though to the
19 workmen's compensation people was that handling 2,4,5-T will
20 not cause chloracne, didn't you, sir?

21 A. That is out of my experience with people who use,
22 who use 2,4,5-T.

23 Q. But now at that time you knew that there were
24 workers at Monsanto, and we're talking -- you were talking

1 about workers' claims for compensation being exposed to the
2 process at Monsanto, you knew at that time that there were
3 workers who did nothing but haul the 2,4,5-T, and that got
4 chloracne, you knew that, didn't you, sir?

5 A. Would you show me the report in which I say that?

6 Q. Excuse me, did you know that or not, sir?

7 A. I said that there were people in 1953 who did
8 hauling, who handled, and they got chloracne.

9 Q. That's what you said in a report that you signed in
10 1953, but that's not what you swore under oath to the
11 Workmen's Compensation Commission in 1956?

12 A. It's a very different situation, sir.

13 Q. Oh, Doctor --

14 A. People who handled 2,4,5-T as sprayers do not get
15 chloracne, there's no evidence of that.

16 Q. Doctor, what you said in your workmen's
17 compensation hearing, sir, is that people handling, making
18 2,4,5-T will not get chloracne. Now, that's what you said.

19 A. Making or--

20 MR. HEINEMAN: Excuse me, may we --

21 A. May I see that accurately please?

22 Q. You may, surely.

23 A. Why don't you give it to me so I can read it as
24 well.

1 MR. CARR: Do you have a copy with you, counsel for
2 Pages 33 and 34?

3 MR. HEINEMAN: Not with me, no.

4 MR. CARR: Unfortunately I have just the one, so
5 we'll have to read it together.

6 A. Thank you.

7 Q. Page 33 and 34 you're discussing the making of it,
8 sir.

9 A. May I read it?

10 Q. To yourself please. Then when you finish reading
11 there, turn to Page 51 and read that, sir.

12 A. May I read it out loud?

13 Q. If I ask you to.

14 A. I have not said what you have--

15 MR. CARR: Your Honor, would you direct the witness
16 to wait until I ask him a question.

17 THE COURT: Doctor, there is no question that's been
18 asked of you as yet. Please wait until the question is
19 asked.

20 THE WITNESS: Okay.

21 Q. Doctor, the areas that I directed you to to put in
22 context you were asked, first of all, about your experiments,
23 were you not, sir?

24 A. Yes, sir.

1 Q. And you said on Page 33 we have not been able to
2 induce acne in humans with 2,4,5-T, did you not, sir?

3 A. That's pure 2,4,5-T.

4 Q. Doctor, it's the 2,4,5-T that was given to you by
5 Monsanto, isn't that correct, sir?

6 A. It was pure 2,4,5-T without dioxin.

7 Q. Excuse me, Doctor. Was it-- how do you know it was
8 without dioxin?

9 A. It was pure 2,4,5-T.

10 Q. Doctor, how do you know it was without dioxin?

11 A. Well, they had taken all the contaminants out.

12 Q. How do you know that, Doctor?

13 A. They told us that, whatever the contaminants were.

14 Q. Who told you that?

15 A. Monsanto did.

16 Q. Doctor, what you really did was commit a real fraud
17 upon the compensation commission, because --

18 A. I object to what you're saying is a fraud.

19 Q. The workers weren't working with purified 2,4,5-T
20 with the contaminants out, were they, sir?

21 A. As a scientist, sir, I was interested in knowing
22 whether 2,4,5-T alone would be acnegenic.

23 Q. Did you tell the Workmen's Compensation Commission
24 that your experiments were conducted with pure 2,4,5-T with

1 the contaminants taken out by Monsanto before you put it on
2 the human volunteers?

3 A. They asked--

4 Q. Did you tell them that, sir?

5 A. They asked whether--

6 Q. Did you tell them that, sir?

7 A. What I told them--

8 Q. Did you tell them that, sir?

9 A. Tell them what, sir.

10 MR. CARR: Read my question to him please.

11 (Court reporter read back the question.)

12 A. In that quote --

13 MR. CARR: Your Honor, would you direct the witness
14 to answer the question.

15 THE COURT: Doctor, answer the question.

16 A. Yes, sir.

17 Q. Doctor --?

18 A. I did tell them that.

19 Q. Would you specify for me where in this document you
20 described the 2,4,5-T as pure 2,4,5-T with the contaminants
21 taken out? Would you point it to me first, sir, and then
22 I'll ask you the question about it.

23 A. We have not been able --

24 Q. Excuse me. Doctor, would you just please respond to

1 my question. Point out the section where you say you told
2 the Workmen's Compensation Commission that your experiment
3 was conducted with pure 2,4,5-T with the contaminants taken
4 out.

5 A. May I read?

6 Q. If you will point it out to me please, sir, and
7 then I'll ask you questions about it.

8 A. All right. Here it is.

9 Q. Now, Doctor, that's the exact answer that I read to
10 you before. We have been able to induce -- we have not been
11 able to induce acne in humans with 2,4,5-T, isn't that
12 correct, sir?

13 A. That is, sir.

14 Q. All right. Now, Doctor, did you tell the
15 commission that the 2,4,5-T you were working with was pure
16 2,4,5-T with the contaminants taken out?

17 A. I didn't have to.

18 Q. Doctor, my question is did you or did you not?

19 A. We did not, but that's besides the point.

20 Q. Doctor, you may think it's beside the point, but
21 that's the question.

22 MR. CARR: Would you direct the witness to answer my
23 question, Your Honor, and he did and not make further
24 comment.

1 MR. HEINEMAN: He did answer it?

2 A. As a scientist--

3 THE COURT: Doctor, you answered the question.
4 Please wait for the next question.

5 A. It's a scientific issue, sir.

6 THE COURT: Doctor, I am only going to tell you this
7 one more time. You're in a courtroom, and you follow the
8 rules in a court of law in the State of Illinois. You have
9 not been asked a question. You will answer only the
10 questions that are asked of you and not volunteer comments or
11 make any other comments. Do you understand, Dr. Suskind.

12 THE WITNESS: Yes, sir. Yes, Your Honor.

13 THE COURT: Follow it. Mr. Carr, you may proceed.

14 Q. Doctor, the 2,4,5-T that the workers worked with
15 and that was sold to the public was not purified 2,4,5-T, it
16 was plain ordinary manufactured 2,4,5-T, wasn't it, sir?

17 A. It was, sir.

18 Q. Yes. It contained TCDD, didn't it, sir?

19 A. Yes, sir.

20 Q. The product that the workers hauled in the plant
21 contained TCDD, didn't it, sir?

22 A. Yes, at various levels.

23 Q. Yes, Doctor, but it contained TCDD, did it not,
24 sir?

1 A. Some of them might.

2 Q. And the workers who simply hauled the 2,4,5-T got
3 chloracne, didn't they, sir?

4 A. Some of them did.

5 Q. They got the chloracne not from the pure 2,4,5-T,
6 but they got the chloracne from the 2,4,5-T that had the
7 contaminant 2,3,7,8-TCDD contained therein, did they not,
8 sir?

9 A. Yes, sir.

10 Q. Yes. Doctor, do you understand that the commission
11 would make its decision based upon what you told them as a
12 scientist, and that they were not scientists themselves?

13 A. I hope that would be so.

14 Q. Just as this jury is not scientific and they have
15 to rely upon scientists to tell them the truth and the whole
16 truth, don't they, sir?

17 A. Which I did, sir.

18 Q. Excuse me, sir. Could you answer that question
19 please, sir. They have to rely upon and you know that they
20 have to rely upon that, don't you, sir?

21 A. Yes, sir.

22 Q. Now when the commission, when you were discussing
23 the 2,4,5-T, you were discussing it in the framework and the
24 parameters of these workers at Nitro, weren't you, sir?

1 A. Yes, sir.

2 Q. And you told the commission, and they relied upon
3 the things that you said, didn't you, sir?

4 A. Yes, sir.

5 Q. And you weren't talking about purified 2,4,5-T,
6 because on Page 51 you were talking about, if you could refer
7 to it, you say you're talking about the final product, aren't
8 you, sir? Page 51, sir. I don't know that I turned it to
9 Page 51. You say there on Page 51 where the counsel asked
10 you this question, from your work with 2,4,5-T -- are you
11 there, sir?

12 A. It's a different Page 51.

13 Q. Just about. You're not there yet. Got to go back
14 farther. The question there on Page 51 asked you, from your
15 work with 2,4,5-T both with animals and with humans, do you
16 feel that 2,4,5-T and I'm limiting my question to that, is
17 particularly toxic or is it acnegenic in your opinion?

18 Your answer was well, 2,4,5-T, and I think we had
19 to again say that 2,4,5-T is the final product of this
20 operation in which the men were involved, you mentioned the
21 product in which the men were involved, didn't you, sir?

22 A. Yes, sir.

23 Q. Yeah. And that wasn't purified 2,4,5-T, was it,
24 sir?

1 A. No.

2 Q. Now, Doctor?

3 A. No, but --

4 Q. Now, Doctor --

5 A. Can we continue this reading?

6 Q. Doctor, the question that I'm asking you about is
7 whether or not the commission was aware of that the end
8 product that these men were working with was acnegenic,
9 because it contained TCDD or a contaminant. That's the
10 thrust of this question, Dr. Suskind, as you well know, and
11 the commission was not so informed, were they, sir?

12 A. Yes, they were.

13 Q. Where were they informed of that fact, sir, point
14 it out to me please.

15 A. The --

16 Q. Point it out to me please, sir.

17 A. If I could read on Page 52--

18 MR. CARR: Your Honor, would you direct the witness
19 to do as I've asked him to do?

20 THE COURT: You were asked to point it out. Please
21 point it out.

22 A. Well, I haven't read through this, sir, in a long
23 time, so I can't tell you where it is.

24 THE COURT: Why don't you skim through it and point

1 it out.

2 A. Its about 150 pages.

3 Q. Doctor, the references that I have given to you in
4 the thirties and and in the fifties. Read that area, because
5 that's where the 2,4,5-T--

6 A. I'd like to read 52.

7 Q. Read Page 52, if you like, Doctor, but to yourself
8 please, sir.

9 A. Well, I'd like the Court to hear it, because that's
10 where I say --

11 Q. Doctor, you understand that you're not the Judge in
12 this case nor the jury nor the lawyer. Do you understand
13 that you are required to do as we ask you to do? Do you
14 understand that, sir?

15 A. Yes, sir.

16 Q. All right. Now, would you please do as I'm asking
17 you to do. Look to Page 52 and point out to me, if you will,
18 sir, where you inform the commission that the 2,4,5-T these
19 men are working with is contaminated with a chloracnegenic
20 agent.

21 A. It's not on Page 52.

22 Q. Well, is it on Page 51?

23 A. No, it's not on Page 51.

24 Q. Is it anyplace there that you know of where you

1 pointed it out to the commission that this 2,4,5-T--

2 A. I can't tell you.

3 Q. -- Was contaminated with a chloracnegenic agent?

4 A. I can't tell you, but--

5 Q. Is it on any of the pages that I directed your
6 attention to, sir?

7 A. Not, not on the pages that you have directed me
8 to. It might be in there though, sir.

9 Q. Yes, it might be, but it's not on the pages that I
10 have directed your attention to.

11 A. There's other information in there.

12 Q. Doctor, there's a lot of information in there, but
13 it's not on the pages that I've directed your attention to,
14 is it, sir?

15 A. No, not the ones that you have picked out.

16 Q. Now, Doctor, I'm about to -- do you know whether or
17 not, Doctor, whether or not any of these workers got
18 workmen's compensation?

19 A. I have no idea, sir.

20 Q. Did you ever bother to inquire that their claims
21 were all denied.

22 MR. HEINEMAN: Objection, Your Honor, may counsel
23 approach the bench?

24 THE COURT: Yes, you may.

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

3 MR. HEINEMAN: Your Honor, I'm going to ask for an
4 opportunity in chambers to ask for a mistrial. Mr. Carr
5 can't score any points with this witness on
6 cross-examination. Then he tries to vilify and then third,
7 he brings in statements about whether or not these men got
8 workers' compensation. That has absolutely nothing to do
9 with the issues in this lawsuit, and it's done solely for the
10 purpose to try to prejudice the jury in some way. It has
11 nothing whatever to do with this case. That's a decision by
12 the worker's comp board in West Virginia.

13 THE COURT: In the context it was asked it was a
14 proper question. It is relevant. It goes to his motives as
15 far as testimony is concerned, and I will also tell you that
16 if this witness proceeds in the course of conduct that he has
17 this morning, I'm going to hold him in contempt. We'll break
18 for lunch at this point in time.

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

20 THE COURT: Okay. Ladies and gentlemen, it's noon
21 so we're going to break for lunch at this time. Excuse me.
22 The admonishments that I gave you earlier will apply during
23 this break also. Court's in recess.

24 (At this time a short recess was taken.)

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(The following proceedings were had in open Court.)

Q. Dr. Suskind, this morning you testified that the Diamond Alkali trichlorophenol that you tested produced chloracne. Do you recall that, sir?

A. I did.

Q. You know in point of fact that that is not true, don't you, sir?

A. It is true, sir.

Q. Doctor, do you recall you testified in the case involving the workers at Nitro on the 27th day of February, 1985, in which you were asked questions as to whether or not, similar to what I have asked here as to whether or not the product that Diamond -- the results of Diamond Alkali process produced chloracne? Do you recall you were asked questions like that there?

A. I don't remember, sir. It was a long time ago?

Q. You do remember that you were under oath in that case just as you're under oath in this case, don't you, sir?

A. Yes, I do.

MR. CARR: This is Page 27197, counsel.

MR. HEINEMAN: Can you wait just a second?

MR. CARR: Sure.

MR. HEINEMAN: 27 what?

1 MR. CARR: 27197.

2 MR. HEINEMAN: Thank you.

3 Q. To put it in context, Dr. Suskind, you recall that
4 you were asked about a second study that you did in -- with
5 the hollow wax and parts of the 2,4,5-T product that you
6 reported in 1955, do you recall that, sir? Do you recall
7 that you delivered a report to Monsanto in 1955 entitled An
8 Appraisal of the Acne Inducing Properties in Human Skin of
9 Three Materials Submitted by the Monsanto Chemical Company,
10 Nitro, West Virginia?

11 A. Yes, sir, and we discussed that this morning.

12 Q. And this morning you said that Diamond Alkali's
13 material did produce chloracne, didn't you, sir?

14 A. Yes, I did.

15 Q. Now, on -- and let me give you excerpts of that so
16 you may follow with me. Of course, you understand that this
17 morning you were under oath to tell the truth, Dr. Suskind,
18 you do understand that, don't you, sir?

19 A. Yes, sir.

20 Q. On Page 2791 it describes, 27197 it describes the
21 samples that you used. One was Sample 3, which was prepared
22 from the plant's sodium trichlorophenate?

23 A. Umhm.

24 Q. Four was prepared by distilling trichlorophenol?

1 A. Umhm.

2 Q. Sample 5 was sodium trichlorophenate prepared
3 according to the Diamond Alkali?

4 A. Umhm.

5 Q. Which was another producer of trichlorophenol
6 according to their procedure in which there was a dilution
7 and filtration employed that contained 31 percent
8 trichlorophenol. You see that, sir? Do you see that, sir?
9 Dr. Suskind, do you hear me?

10 A. Yes, I see it, sir.

11 Q. All right.

12 A. I have to follow you with this.

13 Q. If you turn to page 27200, you were there asked
14 what were the results of this study, and you say there at
15 Line 22, simply stated we found both clinically and by biopsy
16 that the material from the plant, Sample 3 actually produced,
17 reproduced chloracne after six weeks of exposure. Do you see
18 that, sir?

19 A. Yes, sir.

20 Q. On the next page you say there was some evidence of
21 it after the second week of exposure, more after the fourth
22 week, but after the sixth week there was plugging and pustule
23 formation, and when we took biopsies, it was obviously
24 chloracne. You see that, sir?

1 A. Yes, sir.

2 Q. And then you go on to say the second material
3 produced some mild chloracne, but not as typical as the
4 material from the plant operation. The substance number
5 five, which was the Diamond Alkali procedure prepared
6 trichlorophen¹ate did not produce any chloracne. You see that
7 statement, sir?

8 A. Right, I see it.

9 Q. Doctor, that was the truth there, wasn't it, sir?

10 A. It is.

11 Q. And on the next--

12 A. Except if I can explain.

13 Q. On Page 2720--

14 A. May I explain?

15 Q. I'm sorry, sir. You have acknowledged it was the
16 truth there, did you not? And on the next Page 2702 you
17 repeat it again, did you not, sir, at Line 11, and that the
18 diluted material, which was the method of Diamond Alkali did
19 not produce any chloracne was the method that we used. You
20 said that a second time, didn't you, sir?

21 A. Yes, sir.

22 Q. That was the truth there, wasn't it, sir?

23 A. Yes, sir.

24 Q. Now, Dr. Suskind, the -- you also had a meeting

1 with the engineers and others at Monsanto and discussed with
2 them the Diamond Alkali process, didn't you, sir?

3 A. I don't recall the meeting, I don't recall the
4 transactions of the meeting. I know there was a meeting, but
5 I don't have a copy of it nor I'm not sure I even got one.

6 Q. I'm sorry?

7 A. I'm not even sure that I have a copy of that
8 meeting that you're referring to.

9 Q. Doctor, that isn't material to me. The material
10 point is that you discussed at that meeting whether or not
11 they wanted, the company wanted to continue to use the method
12 they were using or to use another method such as Diamond
13 Alkali's, isn't that correct, sir?

14 A. That's true, or some other method.

15 Q. And, Doctor, at Page 27204 in your testimony in the
16 Federal Court in West Virginia you stated as to
17 recommendations, where you were asked whether or not you made
18 any recommendations, correct sir, and you said there, I think
19 it was really up to the engineers of the company to determine
20 whether or not they wanted to continue to use the method
21 which was being used, but to use it safely, that is, chemical
22 agents can be toxic, but if they're handled properly, why,
23 one can manufacture them or make them safely by specific
24 engineering techniques, but it was up to really the

1 engineering group of Monsanto to determine which of the
2 techniques they wanted to use in their own plant. Did you not
3 say that, sir, at that time?

4 A. I did, as the record will show.

5 Q. I'm sorry, Doctor, I could not hear your answer?

6 A. As the record will show.

7 Q. I was in the middle of asking another question and
8 if --

9 A. I'm sorry to interrupt.

10 Q. I'm sorry?

11 A. I'm sorry to interrupt you.

12 Q. Thank you. Doctor, at that point in time Monsanto
13 knew that it had a substance in its plant, not only the
14 intermediate but the substance that was being produced,
15 2,4,5-T, that caused chloracne and a wide variety of other
16 problems stemming from systemic poisoning, isn't that
17 correct, sir, systemic intoxication, isn't that correct, sir?

18 A. In 1953 that probably was not completely correct.

19 Q. In 1955 when you made your report to them, sir, and
20 the results of your studies.

21 A. Would you repeat the question please?

22 MR. CARR: Would you read it to him.

23 (Court reporter read back the last question.)

24 Q. Monsanto knew at that time, Dr. Suskind, that they

1 had a method or process of making 2,4,5-T, the end product
2 itself and its intermediate products were capable of causing
3 chloracne and a wide variety of other manifestations of
4 systemic intoxication, isn't that correct, sir?

5 A. That is true if you're referring to 1949, '50 or
6 maybe '51. I'm not sure about '55.

7 Q. Doctor, you do know from the previous information
8 I've given you that the 2,4,5-T that they manufactured all
9 through the fifties and the sixties continued to contain
10 large amounts of 2,3,7,8-TCDD, you know that, don't you, sir?

11 A. I do not know that, sir.

12 Q. Doctor, would you-- You do not know that?

13 A. I do not know that it contained large amounts of
14 TCDD, which you have just stated.

15 Q. You do not know that it contained from 8 to 50
16 parts per million of 2,3,7,8 TCDD?

17 A. No, I do not know that, sir.

18 Q. Have you never--

19 A. You have told me that, sir.

20 Q. Sir?

21 A. You have told me that.

22 Q. Am I the only person that's told you, is it the
23 only time you've learned or heard that the 2,4,5-T that was
24 being made at the Nitro, West Virginia plant in the sixties

1 contained 2,3,7,8-TCDD at levels ranging from 8 to 50 or 55
2 parts per million? Is that what you're telling us, sir?

3 A. I am telling you that at the time that we did our
4 study.

5 Q. Excuse me, Doctor, I'm not referring to at the time
6 you did this study. I am referring to the knowledge that
7 things that have occurred now. You just got through saying
8 that I told you that the 2,4,5-T contained these levels of
9 2,3,7,8 TCDD. My question is, sir, is this the first time
10 you have learned that, from me?

11 A. No, it's not the first time I have learned it.

12 Q. You have learned it on a number of occasions before
13 today, have you not, sir?

14 A. I have learned it on the first occasion when we did
15 our morbidity study, and I asked if there were, cause I
16 didn't know.

17 Q. Doctor, you do--

18 A. -- Up until that time what the levels were. May I
19 finish, sir?

20 Q. No, Doctor, you may not finish, because you have
21 answered my question, and my question relates to Monsanto's
22 knowledge and whether or not you learned it, and my question
23 is not as you as the defendant, Dr. Suskind. You are not the
24 defendant in this case. Monsanto knew, and my question was

1 relating to Monsanto's knowledge, they knew that they had a
2 process that they were using in the forties and the fifties
3 and the sixties that was capable of producing chloracne and
4 other systemic signs of intoxication poison, isn't that
5 correct, sir.

6 MR. HEINEMAN: Object to the question as
7 interrupting the witness' prior answer. Object to it being
8 interrupted.

9 THE COURT: Overruled. It's proper. You may answer
10 the question, Doctor.

11 A. Would you restate the question, Mr. Carr.

12 (Court reporter read back the last question.)

13 A. Yes, they knew in the forties and the fifties that
14 there was, but by the time the sixties came around, I don't
15 know what the frequency of chloracne or systemic
16 manifestations were, so I can't answer it with a yes or no.
17 They did know in the forties and fifties.

18 Q. Doctor, my question isn't even related to the
19 frequency of these things occurring. My question is related
20 to the material they were producing, that Monsanto was
21 producing in these periods of time contained 2,3,7,8-TCDD,
22 which was capable of doing these things, isn't that correct,
23 sir?

24 A. Yes, but I don't know when they knew it.

1 Q. Doctor, I'm not asking you when they knew it.

2 A. Well, I thought you were.

3 Q. They knew it when they tested their product, and
4 it's not material as far as you're concerned when they knew
5 it, because they knew it when they first had the accident in
6 1949. They knew it then, did they not, sir?

7 A. They didn't know that it contained TCDD.

8 Q. No, but they knew that it contained something that
9 was causing-- they didn't put the name on it, they knew that
10 when you put pure 2,4,5-T or 2,4,5-T on a person produced in
11 Diamond Alkali's or distilled as you suggested, you knew then
12 and they knew then that it did not cause chloracne and these
13 other systemic signs, but they also knew that their product
14 did produce these things, didn't they, sir?

15 A. I'm not sure I get -- one question -- I have heard
16 about four questions in what you have said and what are the
17 questions?

18 Q. The question is, Doctor --

19 A. The questions.

20 Q. Monsanto knew that they were producing a material
21 in these years that was capable of causing these effects, did
22 they not, sir?

23 A. Yes, in the forties and fifties

24 Q. Doctor, you learned when you did the morbidity

1 study that they knew it in the sixties as well, didn't you,
2 sir?

3 A. They knew that they were producing chloracne, some
4 chloracne in the sixties.

5 Q. Doctor, that isn't what I've asked you. My
6 question relates to the production of 2,3,7,8 TCDD that was
7 capable of causing chloracne and other things as you well
8 know. They knew in the sixties they were producing 2,4,5-T
9 which contained 2,3,7,8-TCDD, did they not, sir?

10 A. They knew that, that in the sixties only by--

11 Q. Excuse me, Dr. Suskind. My question is they knew
12 that, did they not, sir?

13 A. Only after they tested it in the seventies, not in
14 the sixties.

15 Q. Doctor, what makes you think they didn't test it in
16 the sixties?

17 A. Because we -- I really believe --

18 Q. Doctor, what makes you think -- I don't care about
19 your belief -- I want to know what makes you think that they
20 didn't know it in the sixties?

21 A. Well, I'm really not sure that they didn't know it
22 in the sixties.

23 Q. I know you're not sure, Doctor, because they knew
24 it in the sixties, and we have the documents in this case

1 that so show that it's so. Now, Doctor, during this period
2 of time there was a process capable of producing 2,4,5-T that
3 would not have this acnegenic agent, isn't that correct,
4 sir?

5 MR. HEINEMAN: Objection, Your Honor. May
6 counsel--

7 A. No, sir.

8 MR. HEINEMAN: Doctor, please.

9 THE COURT: Yes, you may.

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

12 MR. HEINEMAN: I object to the statement of Mr.
13 Carr about we have documents in this case to prove that they
14 knew it in the sixties. That's not a question, that's a
15 statement to the jury. I object to it, and I move that it be
16 stricken, and I'd like to know what documents he's referring
17 to, because I don't think there are documents in this case
18 that establish that, and I think it's misleading to the
19 witness, and I object to it on that basis as well.

20 MR. CARR: There are documents, and we have
21 established it, and I don't have all the particular documents
22 at hand, and counsel knows that. It's in evidence.

23 MR. HEINEMAN: Well, I don't know what you have got
24 at hand and what you don't have at hand.

1 MR. CARR: Maybe you weren't here during that time.

2 MR. HEINEMAN: The fact of the matter is he doesn't
3 have this document here. He now claims that it exists. I'd
4 like to see it, and I object to his making statements of that
5 kind, and he's misleading the witness, and I object to it on
6 that basis and I object to the fact that it's a statement,
7 it's not a question. It's directed to the jury. It's
8 improper.

9 THE COURT: Do you have anything you want to say?

10 MR. CARR: No, Your Honor. I think it's in
11 evidence, and it was a statement that was called for by his
12 statement that was uncalled for.

13 THE COURT: Objection is overruled.

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

15 Q. Now, Doctor, when you went into the workmen's
16 compensation hearing, that took place in November of '56, did
17 it not, sir?

18 A. It was November 29, 1956.

19 Q. You had a meeting with the Monsanto people in June
20 of 1956 to discuss and did in fact discuss the various
21 results of your various tests insofar as producing chloracne,
22 did you not, sir?

23 A. I don't recall that we had a meeting. I assume
24 that you have a document which shows that. I hope you do.

1 Q. Doctor, I don't understand that I'm required to
2 respond to your question. My question is you knew you did
3 have a meeting, did you not, sir?

4 A. No, I don't recall a meeting, Mr. Carr, it's 30
5 years ago, and I'm -- I don't know whether I had a meeting or
6 didn't have a meeting when you say so. You will have to show
7 me that I did.

8 Q. Doctor, I suggest to you that it isn't my
9 obligation to show you. If you do not recall it, Doctor, I
10 can refresh your memory with various testimonies that you
11 have made. Do you wish your memory refreshed? We just
12 referred to the very document, sir, you have it in front of
13 you, your Page 27203. I gave it to you, sir. You say at
14 that page, do you not, sir, this report was discussed
15 thoroughly at a meeting in 1956, June 22, 1956. Do you not
16 say that under oath in the Federal Court, sir?

17 A. I see a reference to it.

18 Q. I'm not asking you if you see the reference to it.
19 My question is, sir, this is what you said in the Federal
20 Court under oath, isn't it, sir?

21 A. If I did, then I probably --

22 Q. Doctor, my question is this is what you said in the
23 Federal Court under oath, isn't it, sir?

24 A. Yes, sir, it is.

1 Q. And, Doctor, the report was indeed discussed
2 thoroughly, wasn't it, sir? Those are the words you used,
3 correct, sir?

4 A. I don't see a reference to your statement that it
5 was thoroughly discussed.

6 Q. Doctor, I just read it to you.

7 A. What page is it, sir?

8 Q. On Page 27203 where you said quote at Line 3 and 4
9 this report was discussed thoroughly at a meeting on June 22,
10 1956, do you see that, sir?

11 A. Yes, sir, I do.

12 Q. And it was discussed thoroughly, wasn't it, sir?

13 A. I assume it was. I have no recollection, sir.

14 Q. Now, Doctor, you had a recollection in the Federal
15 Court just a year ago, and June 27, 1985, not quite a year
16 ago in which you said you discussed it thoroughly there, did
17 you not, sir?

18 A. I probably had on hand --

19 Q. Excuse me, Doctor, you said it then, did you not,
20 sir?

21 A. Yes, sir, but I probably had on hand a document
22 which recorded that meeting. I never got a copy --

23 Q. Doctor, you may have. I'm not asking you that. My
24 question pertains to whether or not it was discussed

1 thoroughly, and it was, wasn't it, sir?

2 A. If I indicated that it was, it must have been
3 discussed thoroughly.

4 Q. Doctor, it's not a question if you indicated it
5 was. You in fact swore under oath. It's not an indication.
6 It was a strong outright affirmation, strong statement that
7 it was discussed thoroughly, isn't that correct, sir?

8 A. Yes, it is according to the record.

9 Q. Doctor, do you question the accuracy of the record?

10 A. I do not, sir.

11 Q. You said according to the record?

12 A. I do not, sir.

13 Q. Doctor, do you have any knowledge at any time from
14 that point up until the time Monsanto quit making 2,4,5-T as
15 to whether or not they made any attempt to do what they knew
16 they could do, that is, remove the contaminants from the
17 2,4,5-T?

18 A. I believe that they did change their engineering
19 methods.

20 Q. Doctor, that isn't my question. My question is did
21 they do anything to remove the contaminants, and they knew
22 that they could remove it, did they not, sir?

23 A. They didn't know waht the contaminant was at the
24 time.

1 Q. Doctor, it doesn't make any difference whether--
2 they knew they could produce a 2,4,5-T that wouldn't cause
3 these effects, didn't they, sir?

4 A. There were --

5 Q. Did they know that, Dr. Suskind, or not?

6 A. They knew that there were methods that produced
7 less of whatever was causing chloracne.

8 Q. No, Doctor. They knew they had methods to produce
9 something that did not cause chloracne, cause the Diamond
10 Alkali process did not cause chloracne according to your
11 sworn testimony, isn't that correct, sir?

12 A. My sworn testimony indicated that, but there's an
13 explanation for it.

14 Q. Doctor, it was a strong affirmation. You said it
15 twice under oath under questioning by Monsanto's lawyer that
16 Diamond Alkali process did not produce chloracne, didn't you,
17 sir?

18 A. I said here that --

19 Q. Didn't you say that, sir?

20 A. But it does produce --

21 Q. Doctor --

22 MR. CARR: Your Honor, would you order the witness
23 to answer the question.

24 THE COURT: Doctor, you have to answer the question

1 that was asked of you.

2 A. The Diamond Alkali--

3 Q. My question, sir, didn't you say that at that time?

4 A. Say what?

5 Q. That Diamond Alkali process does not cause
6 chloracne.

7 A. I said it at that time.

8 Q. Yes.

9 A. If the Court will allow an explanation, I'd be
10 happy to provide it, sir.

11 THE COURT: Doctor, just answer the questions.

12 Q. Doctor, Monsanto had already demonstrated to you
13 that they, too, could produce a 2,4,5-T that did not contain
14 that contaminant, didn't they, sir?

15 A. I'm not sure I understand what you're referring to.

16 Q. Is there anything about that question that is
17 complicated, Dr. Suskind?

18 A. I don't know what --

19 Q. Did you not tell us this morning that Monsanto gave
20 you a sample of 2,4,5-T that did not produce chloracne, that
21 they had removed the contaminants from it?

22 A. 2,4,5-T?

23 Q. Didn't you tell us that this morning, sir?

24 A. Yes, I did.

1 Q. So Monsanto was capable of producing 2,4,5-T
2 without that chloracne producing contaminant, weren't
3 they, sir?

4 A. This could have been done in a laboratory.

5 MR. CARR: Your Honor, would you direct the witness
6 to answer the question.

7 THE COURT: Doctor, that was not responsive to the
8 question. Answer the question that was asked of you.

9 A. The answer is no.

10 Q. Did they give you 2,4,5-T that they made so that it
11 did not have the contaminant in it?

12 A. Yes. It could have been made in the laboratory.

13 MR. CARR: Your Honor, would you direct the witness
14 to answer my question and would you ask the jury to disregard
15 this last statement of the witness.

16 THE COURT: The jury is so to disregard it.
17 Gentlemen, we're going to take a short break. I want to see
18 you in chambers. Court's in recess.

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

21 THE COURT: Dr. Suskind, repeatedly throughout your
22 testimony in this case you have been requested to answer
23 questions directly, and you have refused to do so even though
24 you've been admonished not to. You have been requested to

1 answer questions directly and you have gone beyond them and
2 you've been told not to. You have volunteered matters and
3 made statements that are not responsive to questions although
4 you have been requested not to and admonished not to.

5 Basically your behavior as a witness before this
6 Court has been outrageous. I have told the attorneys for
7 Monsanto, specifically Mr. Heineman, that I thought that your
8 behavior was and gave some specifics as to how it should
9 conform to accepted standards of behavior of a witness in the
10 Circuit Courts of the State of Illinois and you have not done
11 that. I am telling you personally that you have been
12 violating these court orders, and in view of the
13 circumstances of your age, I'm going to warn you at this
14 time. I'm not going to hold you in contempt now, but if you
15 violate it one more time, I will hold you in contempt.

16 Now, the -- a Judge who, a circuit judge who holds
17 a person in contempt has the power to either fine that
18 person, put that person in the county jail until the orders
19 of the court are complied with or both, and I am telling you
20 that I have the capacity to do either or both and that that
21 decision is mine and that's mine alone. You are on the verge,
22 one more instance of being held in contempt. You have been
23 admonished as to what the proper behavior is and what's
24 expected of you. It has been explained to you a number of

1 times in court. I have requested that Mr. Heineman explain
2 it to you in the privacy of their offices, so I assume that
3 it has been; and for some reason you have failed to conform
4 with that. You are obviously an intelligent man, you are a
5 very articulate man, and I don't believe that there's any way
6 in the world that you are not capable of conforming to this
7 standard of behavior. For some reason you are choosing not
8 to. I'm telling you now, and this is your last warning. If
9 you don't conform to this standard of behavior, I will hold
10 you in contempt. Do you understand what I've just said.

11 THE WITNESS: Yes, sir. I apologize for my
12 indiscretions in this respect, and all I can say is that as a
13 scientist, my view of how one responds is probably a little
14 different than in a court of law.

15 THE COURT: Right.

16 THE WITNESS: And perhaps you will understand that
17 and my spontaneity for responsiveness I think you have
18 already observed, but it's my only way of being able to
19 attempt to get at what I believe to be the scientific truth,
20 and that's what I'm interested in.

21 THE COURT: Well, Doctor, let me explain something
22 to you. You're not running a seminar, and you're not
23 lecturing. Our method of arriving at truth in this
24 truth-seeking process and that is what a trial is through an

1 adversarial method is by means of question and answer in a
2 regulated environment where each side or sides have an
3 opportunity to come back and amplify or supplement or correct
4 or whatever. As I have told you before, Mr. Heineman has the
5 right to redirect examination after cross-examination. Mr.
6 Carr has the right to recross-examination and back and forth
7 as part of this question and answer truth-seeking process.

8 Now, since you are in this environment by law this
9 is the way that you and I and Mr. Heineman and Mr. Carr and
10 any of the attorneys involved have to operate in this. You
11 have not been operating under those circumstances. It is not
12 that complicated and a circumstance under which to operate.
13 It might be somewhat unfamiliar, but you have testified
14 before, and it's not that complicated, and that is what you
15 have to conform to even though in your discretion you might
16 run a lecture differently or a seminar differently or a
17 debate or round table discussion on a scientific point
18 differently. This is the way it has to be run in a
19 courtroom, and it is effective in the courtroom atmosphere
20 just as I'm sure your method of running a seminar is
21 effective in the seminar atmosphere. That is what you have
22 to conform to just as if I were a student in one of your
23 seminars I would have to conform to your methodology of
24 discussion of give and take and arriving at a scientific

1 truth. You been so warned. You understand?

2 THE WITNESS: May I ask another question about
3 process?

4 THE COURT: Yes.

5 THE WITNESS: If I am to give a yes or no answer --

6 THE COURT: Yes.

7 THE WITNESS: May I also qualify that yes or no
8 answer?

9 THE COURT: If the question calls for a yes or no
10 answer, answer it. If no qualification is called for at that
11 time, Mr. Heineman on redirect has the right to ask for an
12 explanation, amplification just as if you give Mr. Heineman a
13 yes or no answer, Mr. Carr on recross or on his
14 cross-examination would have the right to get an explanation
15 of that. These questions are asked for a reason that involve
16 this case. They are precise because they are asked for
17 specific reasons, and these gentlemen in their professional
18 judgments will decide what needs to be asked and what
19 doesn't. So only answer the question. When something calls
20 for a yes or no answer, that's the answer you give.

21 THE WITNESS: Without qualification?

22 THE COURT: Without qualification.

23 THE WITNESS: Okay.

24 THE COURT: If either of the attorneys want it

1 qualified, they will ask you a question that asks you to
2 expand on that or a specific of the basis of that answer, but
3 as you see yourself, you know, you have a question that calls
4 for a yes or no answer, then that's obviously how it's to be
5 answered by either counsel, by either counsel, because your
6 response, and I mentioned this on the record before to Mr.
7 Heineman, your response to questions that Mr. Heineman asked
8 went beyond the scope of his questions also, and Mr. Heineman
9 chose not to do anything about that, which is his right to
10 do. That's his professional judgment, but he had the right to
11 bring that into question if he wished. He chose not to, Mr.
12 Carr has chosen to, which is also his right to do so, so
13 listen to the questions and answer only the questions.
14 Okay.

15 THE WITNESS: Thank you.

16 MR. HEINEMAN: Your Honor, for the record I want to
17 state my objection to what you have just done.

18 THE COURT: Fine.

19 MR. HEINEMAN: I believe it would have the effect
20 of intimidating the witness and for the record I object to it
21 on that basis. I might add that with respect to the incident
22 that gave rise to this particular, this particular situation
23 Mr. Carr was asking the witness whether or not Monsanto knew
24 that it produced a material which was -- which would not be

1 chloracnegenic, that it could produce a material that could
2 not be chloracnegenic. The obvious implication by Mr. Carr
3 was that that would occur in the production process. I think
4 what the witness was attempting to explain was something that
5 I think he knows and maybe I'm mistaken, but I think he
6 knows, that it was a laboratory produced material that was
7 distilled in some way, and that is what I think he was trying
8 to get across to dispel the implication that it was produced
9 in the regular process, and if that can be offered in
10 explanation of what -- and I might add, Your Honor, that as I
11 know Mr. Carr has, I have read the transcript from Nitro.

12 The process which you have outlined to the witness
13 here was not followed there. The witness was permitted by
14 the Court on cross examination by Mr. Caldwell to explain his
15 answers. He was permitted --

16 THE COURT: I don't care if he was or not. He was
17 told, he was put in a process in Nitro or in the workmen's
18 comp hearings in 1956 where he was to follow the rules of the
19 court however that Judge decided they were to be applied and
20 however they happened to exist in that court or in that
21 administrative hearing, so I don't really care if that
22 specific was followed in Nitro or not. The point was he
23 followed the rules of the United States District Court for
24 West Virginia and the way Judge Copenhagen decided those

1 rules were to be applied in his courtroom, and I expect no
2 less from him in my courtroom in the State of Illinois. I
3 don't particularly -- I'm sure that the rules were different
4 in the federal district court. I know that they're different
5 in federal district court. We been through that on a number
6 of occasions, but the fact is he was in an environment where
7 he was expected to follow certain rules, and I would assume
8 that he did so, not having heard anything to the contrary.
9 He's also expected to follow them in this court or any other
10 court which he might testify in.

11 Number two, as I said before, there is no way that
12 what I have said or what I have done is intimidating this
13 witness. It's not intimidating the witness to make him or
14 her conform to the appropriate rules of court that govern the
15 testimony of a witness, number one. Number two, I doubt if
16 Mr. Suskind can be intimidated by anybody in this room. He's
17 not the intimidatable type. Let's go back to trial.

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

19 Q. Dr. Suskind, is there any question in your mind
20 about Monsanto's capability of producing 2,4,5-T without this
21 contaminant in it if it could do it in the laboratory and if
22 Diamond Alkali could do it in the plant?

23 A. I really can't answer that question. I assume that
24 from the capabilities that I know Monsanto has in the way of

1 high level technology that they might be able to do that, but
2 I don't know what it takes to do it.

3 Q. Doctor, if some other plant was doing it in 1955,
4 '54 at the time you did your experiments on these humans with
5 these products, that means there is a technology that was in
6 existence at that time that some chemical plant was using,
7 isn't that correct, sir?

8 A. That's correct, sir.

9 Q. Do you have anything in your background or your
10 knowledge of either Diamond Alkali or Monsanto that would
11 suggest to you that Monsanto was inferior to Diamond Alkali
12 in its chemical manufacturing processes?

13 A. I don't know of any such.

14 Q. Now, Doctor, with regard to the chloracne,
15 chloracne was continued to be found at the Nitro plant up to
16 the very time it stopped producing 2,4,5-T in '69, isn't that
17 correct, sir?

18 A. Yes.

19 Q. Yes. Now, Doctor, you took issue with the
20 statement of Dr. Moses that chloracne, cases of chloracne had
21 been caused in the production of 2,4,5-T prior to the
22 explosion, do you recall that, sir?

23 A. I certainly do.

24 Q. And could you give the witness Exhibit 908. And on

1 Page 167 -- 908, by the way, Dr. Suskind, is the Moses
2 Selikoff study that was published in the American Journal of
3 Industrial Medicine dealing with the health status of workers
4 at the Nitro plant, isn't that correct, sir?

5 A. Yes.

6 Q. And it was published in '84, your work was
7 published in '85, was it not, sir?

8 A. No, mine was published in '84.

9 Q. In '84 also?

10 A. You're in error, sir.

11 Q. All right. And the workers at Monsanto were the
12 subjects of both studies, isn't that correct, sir, at the
13 Nitro plant?

14 A. Yes.

15 Q. And the particular statement that you say is not
16 true is at the top of Page 167 where it says, only several
17 years later was it further determined that 111 other workers
18 in 2,4,5-T production had had chloracne prior to the 1949
19 explosion, isn't that correct, sir? Are you at page --

20 A. On what page is that, 67?

21 Q. 167 if you have the same copy that I have.

22 A. I see it.

23 Q. And it is a statement that I just read that you say
24 is absolutely not true, isn't that correct?

1 A. That is true, that is not true, yes, that is a
2 statement which is not true.

3 Q. This statement here that they had 111 other workers
4 that had chloracne prior to the '49 explosion is false, you
5 say?

6 A. That's right, it is false.

7 Q. And you're saying that they did not determine that
8 they -- anybody had chloracne prior to the '49 explosion?

9 A. No, I didn't say that.

10 Q. Is that what you are saying?

11 A. No, I'm saying that there were a few cases as said
12 in my direct testimony, there were a few cases which had
13 appeared before the accident, but was not picked up until the
14 accident alerted the medical department that there were some
15 cases, a few.

16 Q. Well, this statement says that it was only several
17 years later, that is, after the accident, that it was
18 determined that 111 other workers had had chloracne prior to
19 the '49 accident.

20 A. It was in 1955 --

21 Q. Excuse me, Dr. Suskind, if you will direct your
22 attention to the question I'm asking you. This statement
23 says that it was only several years later that it was
24 discovered, isn't that correct, sir?

1 A. Right.

2 Q. And that 111 other workers in 2,4,5-T -- that is
3 correct, it was only several years later, wasn't it, sir?

4 A. That part of it is correct, but the 111 before the
5 explosion is absolutely incorrect.

6 Q. Absolutely false you say?

7 A. Absolutely false.

8 Q. And they cite you as authority for that?

9 A. They do indeed, and they cite a paper.

10 Q. And they cite a paper that was published or
11 delivered at Leon, France on January 11, they have the date
12 '77 but in fact it was January 11, '78, isn't that correct,
13 sir?

14 A. That is correct.

15 Q. And it's Plaintiffs' Exhibit 1727, isn't it, sir?

16 A. That's correct.

17 Q. Now, would you turn to the top of the second page
18 of that document, sir. Does it not say, sir, there were --
19 starting at the bottom of Page 1, following this outbreak
20 when a medical survey was conducted, it became apparent that
21 persons not associated with this incident, but who worked in
22 processes of the 2,4,5-T synthesis started to develop the
23 same clinical manifestations, but at a lower level of
24 severity before the date of the accident. There were 111

1 people in this group. Doesn't it say that, sir?

2 A. It says that.

3 Q. Doctor, and this is a statement that you put in
4 your document in 1978, that there were 111 cases before the
5 accident, isn't that right, sir?

6 A. No, sir, it doesn't say that at all.

7 Q. Oh, it doesn't say that at all?

8 A. No, no, it doesn't say that at all. It says
9 following the outbreak when a medical survey was conducted,
10 it became apparent that persons not associated with this
11 incident, but who worked in the process of 2,4,5-T synthesis
12 started to develop the same clinical manifestations, but at a
13 lower level of severity before the accident. That's true.

14 Q. Now, Doctor, isn't that --

15 A. May I finish, sir?

16 Q. Isn't that chloracne?

17 A. That is true. The 111 --

18 Q. Doctor, if it's chloracne, then you're talking --
19 you and Moses are talking about the very same people, aren't
20 you, sir?

21 A. If I may finish my explanation --

22 Q. Excuse me. One at a time please, Doctor. We'll get
23 to your explanation. Isn't it chloracne that both you and Dr.
24 Moses are talking about?

1 A. Absolutely.

2 Q. And Moses says it was developed prior to the
3 accident, doesn't he, sir?

4 A. Some cases were developed prior to the accident.

5 Q. Moses says 111 were developed prior to the
6 accident, doesn't he, sir?

7 A. What she meant to say --

8 Q. Excuse me. Doctor, what she says clearly in the
9 document that I just read to you that 111 cases of chloracne
10 developed before the accident. Isn't that exactly what she
11 says?

12 A. That's what she says, but that's not what I say.

13 Q. My question is that this is exactly what she says,
14 there were 111 --

15 A. But that's not what I say.

16 Q. Dr. Suskind, ^ I am ^ immaterial ^ I'm not asking
17 you yet what you're. I'm not asking you yet what you're
18 saying. I'm establishing first that she's talking about 111
19 cases of chloracne that developed before the explosion,
20 correct, sir?

21 A. No, she's not.

22 Q. Doctor, would you refer to Page 167. Does it not
23 say only several years later was it further determined that
24 111 other workers in 2,4,5-T production had had chloracne

1 prior to the '49 explosion?

2 A. This is what she says.

3 Q. Yes. And isn't she saying there were 111 people in
4 this manufacturing process that had chloracne before the
5 accident?

6 A. Yes, but she's in error.

7 Q. Now, Doctor, my question is this is what she is
8 saying so there's no question about that?

9 A. Yes, that's right.

10 Q. And you in your report are talking about chloracne
11 just as she's talking about chloracne, correct, sir?

12 A. Yes.

13 Q. You're saying in your report that these people
14 developed chloracne, the same problem, and that's chloracne,
15 correct, sir?

16 A. Yes.

17 Q. And they developed before the date of the accident,
18 didn't they, sir?

19 A. But not 111.

20 Q. Excuse me. Don't you say that there were -- the
21 people who worked in the process started to develop the same
22 problem before the date of the accident? Don't you say that,
23 sir?

24 A. I didn't say how many at that time.

1 Q. Excuse me, Doctor. Could you just bear with me a
2 point at a time. The sentence says these people who worked in
3 the processes not associated with the accident started to
4 develop the same problem, that is, chloracne before the date
5 of the accident, isn't that correct, sir?

6 A. That's true.

7 Q. So so far without numbers both you and Moses are
8 correct. She says they had it before the date of the
9 accident, correct, sir?

10 A. Right.

11 Q. And you say they had it before the date of the
12 accident, correct, sir?

13 A. Correct.

14 Q. Now, the next sentence says there were 111 people
15 in this group, doesn't it, sir?

16 A. Yes.

17 Q. And what group is that, Doctor?

18 A. That's the group that developed chloracne in the
19 process alone, but not prior to the accident.

20 Q. Oh, Doctor, the sentence says there were 111 people
21 in the group that started to develop the same problem, that
22 is, working in the process. Isn't that exactly what the
23 sentence says?

24 A. It says working in the process, but it doesn't link

1 the 111 to the group prior.

2 Q. Oh, it does indeed. It says there were 111 people
3 in this group.

4 A. In the group that developed chloracne from the
5 process.

6 Q. That's correct, prior to the accident?

7 A. Well --

8 Q. Doesn't it say developed the same problem before
9 the date of the accident? Doesn't it say that, sir?

10 A. It doesn't say the 111.

11 Q. Doesn't it say that these people developed the same
12 problem before the date of the accident?

13 A. Yes.

14 Q. Are you discussing a group of people there, sir,
15 that started to develop chloracne before the date of the
16 accident?

17 A. I am.

18 Q. All right. And the next sentence you tell us how
19 many people are in that group, don't you, sir?

20 A. But it doesn't say that --.

21 Q. Excuse me, Doctor. The next sentence tells us how
22 many people were in that group, doesn't it, sir? It says
23 quote " there were 111 people in this group", doesn't it,
24 sir?

1 A. Yes, it does.

2 Q. Yes. And, Doctor, Moses that you said is
3 absolutely false also says there were 111 workers in the
4 2,4,5-T production who had chloracne prior to the '49
5 explosion, correct, sir?

6 A. No, sir.

7 Q. Oh, she doesn't say that? Didn't I just read --

8 A. She is wrong in saying that.

9 Q. Doctor, she and you are saying exactly the same
10 thing.

11 A. No, we're not.

12 Q. Aren't you saying exactly what she said?

13 A. No.

14 Q. How many people does she say was in the group that
15 had chloracne before the accident?

16 A. 111.

17 Q. How many do you say were in that group?

18 A. I didn't say.

19 Q. You didn't say there were 111 people in the group?

20 Read that sentence.

21 A. 111 people exposed to the process.

22 Q. Read that sentence, sir, about how many people were
23 in the group that had chloracne.

24 A. There were 111 people in this group. This was the

1 group which in 1953 was identified as having --

2 Q. Doctor--

3 A. May I finish?

4 Q. No, Doctor, you may not, because my question is how
5 many people were in this group?

6 A. May I answer that question?

7 Q. That developed chloracne before the accident.

8 A. May I answer that question?

9 Q. How many people do you say in this document, Dr.
10 Suskind, how many people that she cited forth as authority,
11 how many people do you say were in the group that started to
12 develop chloracne before the accident?

13 A. She says 111.

14 Q. No, I want to know what you say. How many people
15 do you say were in that group?

16 A. I don't identify a number prior to the accident.

17 Q. Doctor, you say, do you not, sir, following this
18 outbreak when a medical survey was -- well, let's back up a
19 little more. When a final count was made five and a half
20 years after the accident there were 117 persons with acne and
21 associated systemic manifestations which could be traced to
22 this one incident, correct, sir?

23 A. Right.

24 Q. Now, that's 117 traced to the accident, isn't that

1 right, sir?

2 A. That's right.

3 Q. Following this outbreak when a medical survey was
4 conducted, it became apparent that persons not associated
5 with this incident, but who worked in processes of the
6 2,4,5-T synthesis started to develop the same problem before
7 the date of the accident. That says that also, doesn't it,
8 sir?

9 A. Yes.

10 Q. And then it says there were 111 people in this
11 group, doesn't it, sir, your words?

12 A. It says that.

13 Q. Doesn't it say that, sir? Then you say there were a
14 total of 228 people affected five years after the 2,4,5-T
15 process was initiated, isn't that correct, sir?

16 A. Yes, it is.

17 Q. And five years, sir, takes into 220 -- there's 111
18 people that were in the group that's developed the problem
19 prior to the accident and 117 that developed in the accident,
20 isn't that correct, sir?

21 A. That is correct, and that would mean that 111 --
22 you're inferring 111 developed prior to the accident and
23 nobody developed --

24 Q. Doctor, I'm not inferring anything. I'm simply

1 reading what you said at Leon, France and that Dr. Moses
2 cited as authority for the statement that you said was
3 absolutely false, aren't I, sir?

4 A. She's incorrect.

5 Q. Excuse me. No, you said she was false, not even
6 incorrect and she in fact is citing exactly what you said in
7 your work in 1978 at Leon, France, isn't that correct, sir?

8 A. She is --

9 Q. Isn't that correct, sir?

10 A. She's attempting to cite it.

11 Q. As a matter of fact, you said the same thing in
12 1973, didn't you, sir, exactly the same thing, didn't you,
13 sir?

14 A. You will have to demonstrate that, sir.

15 Q. Do you not remember the NIEHS conference at
16 Research Triangle Park in '73 where you delivered a talk at
17 that time, sir?

18 A. I'll have to refresh my memory about this.

19 (Plaintiffs' Exhibit 1728 marked for
20 identification.)

21 Q. Hand you what's been marked Plaintiffs' Exhibit 1728
22 entitled Chloracne and Associated Problems. It was presented
23 at the NIEHS conference in 1973, was it not, sir?

24 A. Yes, it was.

1 Q. And, Doctor, the very same language, the very same
2 sentence appears in '73 as appeared in '78, doesn't it, sir?

3 A. Yes.

4 Q. Word for word the same language, isn't it, Dr.
5 Suskind?

6 A. Umhm.

7 Q. And in both documents you say there were 111 people
8 in the group that developed chloracne prior to the incident,
9 didn't you, sir?

10 A. No, sir.

11 Q. You don't say that, sir?

12 A. No, sir.

13 Q. Did I misread it some way or another?

14 A. You put the two sentences together to --

15 Q. Well, one does follow the other, doesn't it, sir?

16 A. One does follow the other--.

17 Q. And the group--

18 A. But the 111 occurred.

19 Q. Excuse me, Doctor. The group referred to in the
20 sentence there were 111 people in this group refers to what
21 group, Doctor?

22 A. It refers to the group --

23 Q. Of people that's described in the preceding--

24 A. May I finish?

1 Q. It refers to the group that was described in the
2 preceding sentence, doesn't it, Dr. Suskind?

3 MR. HEINEMAN: Objection, your Honor. He cut off
4 the question, he cut off the answer after three words came
5 out.

6 THE COURT: You may finish your answer, Dr. Suskind.

7 THE WITNESS: May I continue, sir?

8 THE COURT: Finish.

9 A. The sentence reads following this outbreak when a
10 medical survey was conducted, it became apparent that persons
11 not associated with this incident, but who worked with the
12 process of 2,4,5-T synthesis started, started to develop the
13 same clinical manifestations, but at a much lower level of
14 severity before the accident.

15 Q. Yeah. And how many people were in that group that
16 started to develop these clinical manifestations but not of
17 the same severity before the accident, how many people do you
18 say are in that group, Doctor?

19 A. There is --

20 Q. How many people --

21 A. There's no connection--

22 Q. How many people do you say are in that group?

23 A. There was no connection between the 111 in that
24 group --

1 Q. Could you answer my question? How many people do
2 you say in the next sentence that were in that group?

3 A. I don't say that -- I don't say how many there were
4 in the date before the accident, in the group before the
5 accident.

6 Q. Doctor, you're describing a group of people that
7 started developing these problems before the date of the
8 accident, aren't you, sir?

9 A. Yes.

10 Q. And you tell us how many people were in this group
11 that started developing these clinical manifestations before
12 the date of the accident, don't you, sir?

13 A. The 111 does not refer to --

14 Q. Excuse me, Doctor. Answer that question please.

15 A. No.

16 Q. What does your next sentence, it refers to the
17 preceding sentence, talks about the group, right, sir?

18 A. It talks about a group.

19 Q. And that group was whom, sir?

20 A. That group was the 111.

21 Q. That group you talked about in that sentence refers
22 to what group of people?

23 A. Are you talking about the 111?

24 Q. I'm talking about that sentence, sir, you say there

1 are 111 people in this group. What group are they talking
2 about?

3 A. The group that developed symptoms before the
4 accident.

5 Q. Thank you, Doctor.

6 A. But that's not 111.

7 Q. How many do you say are in that group?

8 A. 111 --

9 Q. Excuse me. How many people do you say in that
10 document are in that group?

11 A. It is incorrect --

12 Q. How many people do you say in this document that
13 are in that group?

14 A. I didn't say that they're -- in that prior group
15 there were any.

16 Q. No, Doctor. We're talking about the prior group and
17 you just got through saying this sentence talks about the
18 prior group.

19 A. Eventually there were 111.

20 Q. Doctor, my question is how many people were in the
21 group that you say started developing these manifestations
22 according to this document?

23 A. That document doesn't state it.

24 Q. Doctor, doesn't it say, it talks about a group of

1 people who are giving these manifestations before the
2 accident, doesn't it, sir?

3 A. No.

4 Q. Oh, it doesn't say -- who's it talking about in
5 this sentence, about people not associated but working in the
6 processes started developing problems? You're talking about
7 a group of people, aren't you?

8 A. Right.

9 Q. And this is a group of people that developed
10 chloracne before the accident, right, sir?

11 A. Right, but not lll.

12 Q. Excuse me, Doctor. Did you understand that I asked
13 you at that point of time how many people were in the group?
14 I asked you so that we could get it straight, Doctor, and so
15 that you could not cabal any way else. I asked you what
16 group, what were we talking about a group of people that had
17 chloracne before the accident, weren't we, sir?

18 A. Yes.

19 Q. That's what you're talking about in that sentence,
20 correct, sir?

21 A. Right.

22 Q. In the very next sentence you're talking about the
23 number of people that are in that group, aren't you, sir?

24 A. Not in the prior group, no.

1 Q. What group are you talking about?

2 A. I'm talking about the group that developed
3 chloracne as a result of the process by 1953 because if you
4 add 117 and 53 and 111, you get the figure which I got 228.

5 Q. That's right. You sure do get the figure, Doctor?

6 A. 228.

7 Q. My question to you, sir, when the survey was
8 conducted, you had how many people in the group that started
9 to develop the same problem?

10 A. I can't tell you.

11 Q. Doctor, you do tell us, you say there are 111 in
12 this group, don't you?

13 A. 111 eventually.

14 Q. No, Doctor, where's the word eventually. You say
15 there were 111 people in this group of people that developed
16 chloracne before the accident, don't you, sir?

17 A. That isn't what I meant.

18 Q. Ah, Doctor, that may indeed not be what you meant,
19 and I won't quarrel with that for a minute. You may have
20 meant that some of those people, ten or five or fifteen, had
21 it before the accident, but what you said was that there were
22 111 people in the group that had chloracne before the
23 accident, didn't you, sir?

24 A. No, I did not.

1 Q. What else did you say there, Doctor, if you didn't
2 say that?

3 A. I said that there was a group that developed
4 chloracne before the accident.

5 Q. How many people did you say were in that group?

6 A. I said 111, but not in the group before the
7 accident.

8 Q. Doctor, what other group are you referring to? What
9 other group do you describe other than the group before the
10 accident in this document, sir?

11 A. You're asking the question. I'll answer it.

12 Q. In this document, Doctor. What other group are you
13 referring to except the people that developed chloracne
14 before the accident?

15 A. I'm referring to another group.

16 Q. What group is it described, where is the other
17 group described?

18 A. I am referring to the group which by 1953 --.

19 Q. Would you point out to me in this document where
20 that group is.

21 MR. HEINEMAN: Objection, your Honor, he
22 interrupted the answer again.

23 THE COURT: Objection is overruled. Not responsive.

24 Q. Would you point out to me, sir, where that other

1 group is you're talking about?

2 A. It's the group --

3 Q. Excuse me, Doctor, I asked you to point out to me
4 in this document where you point out, refer to this group of
5 other people?

6 A. It isn't in that statement, but if --

7 Q. No, it isn't.

8 A. Any reasonable reader would understand what I'm
9 talking about.

10 Q. Doctor, I asked you a simple quesiton whether or
11 not it was in here and it is not in here, and, Doctor, the
12 sentence comes in, and it may be totally incorrect, but the
13 point is is that you said that Dr. Moses made a false
14 statement, and she cited your statement as authority for that
15 statement, didn't she, sir?

16 A. She did it incorrectly.

17 Q. Doctor, did we do it incorrectly here, is there
18 some other-- she had this document to read and what she read
19 was just as we've read it before the jury and I'll pass it to
20 the jury so that they can read it. They had -- she had this
21 document, didn't she, sir? She cites it, she refers to it,
22 doesn't she, sir, isn't that correct, sir?

23 A. She thinks she does.

24 Q. Excuse me, Doctor. Did she cite this document as a

1 reference for this statement, as authority for this statement
2 that we read and that you said was false? Who is the
3 authority that she cites for that statement?

4 A. She cites that presentation.

5 Q. And who is that, who's the author of that
6 presentation?

7 A. I am.

8 Q. And, Dr. Suskind, you said in this presentation
9 that she cited that there were 111 people in this group,
10 didn't you, sir?

11 A. Yes.

12 MR. CARR: Your Honor, I'd like to pass these
13 documents to the jury at this time.

14 THE COURT: Which ones?

15 MR. CARR: 1727 and-- I don't think they been
16 offered.

17 THE COURT: They haven't.

18 MR. CARR: I'll offer them into evidence at this
19 time, Your Honor.

20 MR. HEINEMAN: One minute.

21 MR. CARR: I'll also offer 1726 at the same time,
22 Your Honor.

23 MR. HEINEMAN: Wait a minute. Did I understand
24 1726 is offered?

1 THE COURT: And 27 and 28.

2 MR. HEINEMAN: All of 1727 and all of 1728?

3 THE COURT: That's what I understand.

4 MR. HEINEMAN: Do you have a copy of 1728 for me?

5 MR. CARR: I don't have one for you, counsel.

6 That's the original. It's a copy that you gave me, by the
7 way.

8 MR. HEINEMAN: May counsel approach the bench, Your
9 Honor.

10 THE COURT: Sure.

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

13 MR. HEINEMAN: Your Honor, the exhibits here,
14 Plaintiffs' Exhibit 1727 and 1728 have pencilled notes in
15 them.

16 MR. CARR: Yes, they do. I'm sorry, I wasn't aware
17 of that.

18 MR. HEINEMAN: And highlighting and underlining and
19 pencilled notes in them, which we object to, and I don't want
20 them passed to the jury and I object to them being admitted
21 in that form.

22 MR. CARR: I can erase the-- cause I put it in
23 pencil on 1727.

24 THE COURT: What about 28?

1 MR. CARR: 1728 I'm not sure but what that was the
2 way I got it. No, it's not, no, it's not. I may have a
3 clean copy of that one.

4 THE COURT: Okay. Do you have copies to pass to the
5 jury or not?

6 MR. CARR: I was just going to pass this copy, and
7 there are markings. I do have clean copies, and there are
8 markings on this one.

9 THE COURT: Okay. Why don't -- I'll admit the clean
10 copies. We're due for a break in a few minutes anyway and
11 you can just substitute it.

12 MR. CARR: For now it will be enough just to pass
13 1728, which is -- Whoops -- I thought I had a clean copy.

14 MR. HEINEMAN: This one has got the markings in it.

15 MR. CARR: Just with a pencil. I can erase.

16 THE COURT: Why don't you pass it right after the
17 break and we'll take a break for a few minutes.

18 MR. CARR: That will be fine.

19 THE COURT: Do you have any objection to 1726? That
20 was offered also.

21 MR. HEINEMAN: No, I don't have any objection to
22 any of these exhibits other than I want the marks and the
23 comments taken out of them.

24 THE COURT: Fine. Why don't we take a break and

1 I'll give you a chance to do it. We have had the reporter
2 going since 1:30 anyway. It's time so we'll take a break
3 now. All right.

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

5 THE COURT: Ladies and gentlemen, we'll take a short
6 recess at this time and then resume testimony. The
7 admonishments that I gave you earlier will apply during this
8 break also. Court's in recess.

9 (At this time a short recess was taken.)

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

11 MR. CARR: Your Honor, Plaintiffs' Exhibit 1728 has
12 a lot of my markings on it, which I can't erase at this time,
13 but Plaintiffs' Exhibit 1727 does not have any of my markings
14 on it. There's a marking on it, but it's not mine, it was
15 there when I got it from Monsanto, and I had photocopied the
16 first two pages of that exhibit, which I'd like to pass to
17 the jury, because it's the first two pages that contain the
18 references that I been examining this witness about.

19 THE COURT: Fine. It's been admitted. You may do
20 so.

21 (Exhibit passed to the jury).

22 Q. And for the benefit of the jury it's the last, the
23 referred material starts on the last sentence of the first
24 page and finishes on the top of the following page.

1 MR. HEINEMAN: Is that 27 or 28?

2 MR. CARR: It's 1727, counsel.

3 Q. Doctor, I'd now like to ask you some questions with
4 reference to Defendant's Exhibit 1694. Would you pass that
5 to the witness please. Dr. Suskind, the Exhibit 1694 is the
6 report, the first report that you made following the
7 examination -- trip to Nitro and bringing the -- maybe you
8 didn't go to Nitro. You brought the people to Cincinnati,
9 did you not?

10 A. I don't know what you're talking about, cause I
11 don't have it here.

12 Q. Don't you have 1694?

13 A. No, I don't have it at all.

14 Q. Oh, I'm sorry. I thought-- it's Defendant's
15 Exhibit 1694. I thought I had it out for him to refer to.
16 It's up here. Do you recognize that Defendant's Exhibit 1694
17 as the report that you made on your examinations, you and Dr.
18 Ash's examinations of these initial group of Nitro employees,
19 do you not, sir?

20 A. Yes.

21 Q. And you in fact took these four men, and there are
22 four men that's the subject of this report, correct, sir?

23 A. Yes.

24 Q. You took those four men to Cincinnati and

1 hospitalized them and worked them up, did you not, sir?

2 A. They were sent by Monsanto to Cincinnati.

3 Q. And they were hospitalized?

4 A. They were hospitalized.

5 Q. And examined by you there and worked up, isn't that
6 correct?

7 A. That's true.

8 Q. Did you at that time go to Nitro yourself or prior
9 to the time you made this report had you not visited --

10 A. No, sir.

11 Q. Nitro?

12 A. No, sir.

13 Q. You had been in Cincinnati but not at the plant,
14 not at Nitro, West Virginia, is that correct?

15 A. That's true.

16 Q. So these men that were seen by you, you took the
17 information from them in the form of a history and reported
18 at least part of it in this document, did you not, sir?

19 A. We reported it as accurately as they gave it to us.

20 Q. Is the answer, yes, you did report it in this
21 document?

22 A. We reported it in this document.

23 Q. All right. Doctor, this has the reference to the --
24 although the copy that I've got is a very poor copy, I hope

1 the one that you have is better -- it refers to the contents
2 scattering throughout the interior of the building and as
3 well as over the surrounding terrain and structures that we
4 referred to earlier, does it not?

5 A. Yes, it does.

6 Q. You at one time described the autoclave there or
7 the autoclave involved as antique autoclaves, did you not,
8 sir?

9 A. I don't remember whether I did, but it was an
10 autoclave that had been used in another process before it was
11 used for this one.

12 Q. My question is did you not on occasion describe the
13 autoclave in issue here or the ones that exploded as antique
14 autoclaves?

15 A. I can't tell you. You will have to refresh my
16 memory.

17 Q. Do you ever 17 -- no, you don't have 1728. About
18 the third line down from the top of your 1978 report at Leon?

19 A. This is not the report from Leon.

20 Q. I'm sorry. It's your 1973 report to the NIOSH, to
21 the NIEHS conference in North Carolina?

22 A. It is.

23 Q. And you described that in 1973 as two antique
24 autoclaves, don't you, sir?

1 A. I have in this paper.

2 Q. You have so described it, have you not?

3 A. Yes.

4 Q. And I take it that was the description that was
5 given to you?

6 A. Well, I interpreted it as antique, because these
7 were old autoclaves, and antique means old.

8 Q. Doctor, was this information that was given to
9 you? This is not what you discovered on your own by looking
10 at it, but this is information that you were given, correct,
11 sir?

12 A. By the the workers.

13 Q. Is that correct, sir?

14 A. Yes.

15 Q. All right. Now, Doctor, on the report itself it
16 does describe the material that came out not only in the
17 building but over the surrounding terrain and structures as a
18 fine black powder, described variably as a fine black powder
19 and a thick, sticky dark brown substance, correct, sir?

20 A. Yes.

21 Q. This fine black powder, did they -- did you make
22 any note at any time as to the extent that it went over the
23 surrounding terrain or how far it went, how many other
24 buildings may have been involved?

1 A. No, we did not discuss that with the people who
2 were sent to us for examination.

3 Q. All you know is then what you said in the two
4 places is that in 1728 the course caused the contents to be
5 discharged over a wide area outside of the building, is that
6 correct, sir?

7 A. I'm sorry, but I don't find it in 1694.

8 Q. It's in 1728.

9 A. You're --

10 Q. 1694 you describe it as being scattered within the
11 building as well as over the surrounding terrain and
12 structures. I take it terrain means earth and structures
13 means buildings?

14 A. In 1694?

15 Q. Yes.

16 A. Where is that, what page?

17 Q. First page, second paragraph, first sentence of the
18 second paragraph.

19 A. Okay. I see it.

20 Q. And that describes it as over the surrounding
21 terrain and the surrounding structures, correct, sir?

22 A. Yes.

23 Q. In 1728 it's described in a little different
24 fashion. He says it all started in a chemical plant in a

1 quiet Appalachian town. You describe it as two antique
2 autoclaves, and you say the contents of the vessel was
3 expelled violently and ultimately covered the interior of the
4 building. The force caused the contents to be discharged
5 over a wide area outside of the building. You see that, sir?

6 A. Yes.

7 Q. And as far as how wide or whether it encompassed
8 the entire plant, the plant ground and/or went outside of the
9 plant, do you have any knowledge or information, Dr. Suskind?

10 A. No, I do not.

11 Q. Would it be fair to say that if that fine black
12 powder that was discharged contained TCDD that others in
13 addition to those that were within the building would be
14 exposed to it?

15 A. They might.

16 Q. And workers that passed in the area that had the
17 fine black powder, they might well be exposed, might they
18 not?

19 A. They might be exposed.

20 Q. And plant personnel, not just workers, but office
21 people, visitors to the plant, anybody that walks in the area
22 where this fine black powder was discharged might have
23 exposure to the TCDD in that fine black powder, isn't that
24 correct, sir?

1 A. That he might have brief exposure, they might, no
2 certainty.

3 Q. And they might not?

4 A. Yes.

5 Q. They might have extensive exposure, they might have
6 no exposure, depends upon where the material went and how it
7 got into their system, isn't that correct, sir?

8 A. I doubt that they would have extensive exposure.
9 They might have casual exposure.

10 Q. Doctor, the fine black powder -- matter of fact,
11 you were so concerned about this material that when you
12 conducted your experiments with the human volunteers, you
13 would not allow them to inhale the 2,4,5-T or trichlorophenol
14 or the material that you worked with, would you, sir?

15 A. I'm not sure I understand where you got that from,
16 sir.

17 Q. Doctor, it's not important where I got it from.
18 The question is really isn't it a fact that you did not, that
19 you were concerned about inhalation or ingestion and when you
20 conducted your experiments under the grant from Monsanto, you
21 did not allow them to inhale it or to ingest it, you painted
22 it on --

23 A. There was no opportunity to inhale it.

24 Q. Excuse me. You painted it on their skin?

1 A. We didn't paint it on the skin, we applied it on a
2 patch.

3 Q. You applied it to the skin, you did not allow them
4 to inhale it or ingest it, did you, sir?

5 A. We had no intention of --

6 Q. Doctor, I'm not saying that you did. Could you
7 please answer my question. You did not allow them to inhale
8 it or to ingest it, did you, sir?

9 A. We did not -- no, they did not inhale it.

10 Q. But the people outside where this fine black powder
11 was could inhale it or could ingest it, couldn't they, sir?

12 A. They might.

13 Q. Probably not ingest it, but they could inhale it.
14 They might.

15 Q. They would ingest it if they happened to have a
16 stuffy nose and breathing through their mouth or opened up
17 their mouth and talked and a white -- fine black powder --
18 not white, but this fine black powder was blown into their
19 mouth. That might occur, might it, sir?

20 A. That might. It's hypothetical.

21 Q. And, Doctor, to go on in your document in 1694 to
22 describe on the next page that the -- you described the
23 incident that we talked about earlier, the man that bought
24 the truck that had been parked near Building 41, and he and

1 his child both developed cutaneous symptoms. You see that,
2 sir?

3 A. What's the question? Do I see it? Yes, I see it.

4 Q. Yes. Thank you, Doctor. And you took what you
5 would consider to be four employees that had multiple
6 symptoms and in varying stages, you took those as kind of a
7 test case or test cases, did you not?

8 A. I'm not sure I understand the question. What kind
9 of a test case?

10 Q. For the purpose of -- well, let me start over
11 again, Doctor, to make it clear. At the time you had
12 information that there were 77 persons who had developed
13 these cutaneous and other symptoms that were probably a
14 result of the March '49 accident, isn't that correct, sir?

15 A. Yes.

16 Q. But you did not examine all of those 77. You did
17 not examine the man that bought the truck, you did not
18 examine the child, you did not examine the wives of the
19 workers. You chose four people to examine, did you not, sir?

20 A. We did not choose them, sir.

21 Q. Well, Monsanto chose four employees and sent them
22 to you, didn't they, sir?

23 A. Monsanto chose four severely affected employees.

24 Q. Well, don't you describe the four employees on Page

1 2 as four employees with multiple symptoms and in varying
2 stages of the disease?

3 A. Yes.

4 Q. And by varying stages of the disease you mean just
5 that, don't you, sir?

6 A. I'm not altogether sure, Mr. Carr, what was
7 inferred by varying stages then. This is --

8 Q. Doctor --

9 A. -- A long time ago, but if I were to interpret this
10 I could tell you what I thought it meant.

11 Q. Doctor, you didn't look at all 77. You took four
12 or Monsanto sent you four that they -- that you at least
13 describe they had multiple symptoms, and they are in varying
14 stages of this disease. Varying means variable, not the
15 same, correct, sir?

16 A. They were sent to us with that idea.

17 Q. All right. Now, Doctor --

18 A. They were all very similar.

19 Q. That may be, Doctor, but you describe them as
20 having varying stages of the disease, did you not, sir?

21 A. This is a description in the introduction.

22 Q. Yes, Doctor, I'm sure of that. That is your
23 description in 1949, isn't it, sir?

24 A. In the introduction of our paper.

1 Q. Doctor, I'm not quarrelling with you on that point.

2 A. It does not describe findings.

3 Q. It's what you described in 1949. It may not be what
4 you want to say today, but it is what you said in 1949. I
5 didn't make up these words, did I, sir. Isn't this what you
6 said in 1949?

7 Q. It is not what we found. This is what was --

8 Q. Doctor, we'll get to what you found in good time.
9 This is what you said in 1949, isn't it, sir?

10 A. This is a statement in the introduction to our
11 report.

12 Q. And it is a statement that you made, isn't it, sir?

13 A. It is a description of what we believe these
14 employees were --

15 Q. Dr. Suskind, you may think that you're answering my
16 question, but my question is specific. This is a statement
17 that you made, isn't it, sir, that I just read to you?

18 A. It's a statement that we made in the introduction
19 to the report.

20 Q. Fine, I don't care where you made it, at the end or
21 at the middle or what. It is a statement in this report that
22 you made, isn't it, sir?

23 A. Yes, it is.

24 Q. Now, you made this report at the conclusion of all

1 your examinations and tests and everything else, didn't you,
2 sir?

3 A. That's the way reports are usually done.

4 Q. Of course, and that's when you made this report and
5 made that statement, correct?

6 A. The statement is an introduction to it.

7 Q. Dr. Suskind, please answer my question. I could
8 get down and beg you to answer it, but would you simply
9 answer my question? This is a statement that you made, isn't
10 it, sir?

11 A. It's a statement which appears in our report in the
12 introduction.

13 Q. Which you made at that time?

14 A. Yes, it is.

15 Q. Thank you, Doctor.

16 A. And we stand behind it, too.

17 Q. Doctor, I'm not asking you not to stand behind it
18 or stand on it or under it. I've asked you a simple
19 question. Simply it's a statement that you made in this 1949
20 report, and we have taken five minutes on it. Now, Doctor,
21 pass to the next point, sir. You describe then with Mr. Ival
22 McLanahan the problems that he told you that he experienced
23 at the outset, don't you, sir?

24 A. We do.

1 Q. You say in several hours after his exposure, which
2 was one hour after the explosion, he developed severe
3 headache and nausea, correct, sir?

4 A. Yes.

5 Q. And he had considerable vomiting and vertigo, did
6 he not, sir?

7 A. That's what we say.

8 Q. This headache that he had persisted for eight days
9 and has since recurred at occasional intervals, correct, sir?

10 A. Yes.

11 Q. That means it's occurring up to the time that you
12 last saw him, I take it, in '49?

13 A. I can't say.

14 Q. Doctor, why can't you say? It says and has since
15 recurred at occasional intervals. That means since the
16 accident and during the period of time that you saw him.

17 A. No, he didn't have headaches during the time we saw
18 him.

19 Q. Well, be that as it may, he's had more than one of
20 these severe headaches, did he not?

21 A. Yes, that's what it reads.

22 Q. And, Doctor, you devote a paragraph to describing
23 his chloracne, and then you discuss -- and the chloracne, by
24 the way, developed about six days after the exposure, did it

1 not?

2 A. He developed swelling and erythema, which means
3 redness and itching and after that, which it was more than
4 six days.

5 Q. Well, you say the next few days.

6 A. Yes.

7 Q. Few meaning--

8 A. I just want to be accurate, sir.

9 Q. I know that, Dr. Suskind, I know that's your
10 desire. The next few days, that would be a couple, two or
11 three days?

12 A. It could be ten days after the incident.

13 Q. I'm sorry?

14 A. It could be anywhere from eight to ten days after
15 the incident.

16 Q. A few could be eight-- well, eight to ten days,
17 that would be two to four days then after the incident? I'm
18 sorry, two to four days after he got the swelling he got the
19 inflamed nodules and pustules, did he not, sir?

20 A. Yes.

21 Q. And few in this instance would mean two to four
22 days, correct, sir?

23 A. Yes.

24 Q. All right. You go on to describe it, he had marked

1 hyperpigmentation as well as the pustule problems, did he
2 not, sir?

3 A. Yes.

4 Q. And then you go on and talk about that one month
5 following the initial exposure he developed a wide variety of
6 problems, didn't he, sir? Did he not, sir?

7 A. He developed other problems.

8 Q. But you wouldn't agree that they were a wide
9 variety of problems?

10 A. Not necessarily.

11 Q. Well, he developed an aching pain in the region of
12 his thighs, his calves and the back of his knees, did he not?

13 A. That's one problem.

14 Q. Doctor, my question was did he develop that
15 problem?

16 A. Yes.

17 Q. I don't want to argue about the number of problems,
18 Doctor, or wide variety. I'm simply asking you a question.
19 He developed an aching type of pain in his thighs and his
20 calves and the back of his knees, didn't he, Doctor?

21 A. Yes, sir.

22 Q. Thank you. And that pain was aggravated by
23 exertion, correct?

24 A. Yes.

1 Q. And it even resulted in a temporary inability for
2 this man to even walk short distances, didn't it, sir?

3 A. That's what the statement reads, yes.

4 Q. Doctor, you believed these people to be truthful,
5 didn't you, sir?

6 A. Absolutely.

7 Q. So it's not just the statement reads that way, this
8 is what occurred in the man insofar as you know, insofar as
9 you believe, isn't that correct, sir?

10 A. I believe that it occurred in this man.

11 Q. You believe he was telling you the truth about it,
12 don't you, sir?

13 A. Absolutely.

14 Q. All right. He tells you -- now, that means that he
15 had at least for a period of time the pain of that sort
16 lasted for about six weeks, didn't it, sir?

17 A. Umhm, yes.

18 Q. And would that mean that for that period of six
19 weeks he couldn't even walk short distances or how would you
20 interpret that?

21 A. I'm not sure after the fact, that is, so many years
22 ago how to really interpret that, but it's -- it reads that
23 the pain lasted for six weeks and prior to that we have a
24 sentence which reads the pain was aggravated by exertion and

1 resulted in a temporary inability to walk even short
2 distances. Now, whether or not the inability to walk lasted
3 for six weeks, I don't know. The pain lasted for six weeks.

4 Q. And the pain resulted in the temporary disability,
5 right, sir?

6 A. Yes.

7 Q. And it recurred occasionally since then, it can
8 last from several hours to a few days, can't it, sir?

9 A. That's what it reads.

10 Q. He also complained of weak feeling, fatigue upon
11 mild to moderate exertion, insomnia, loss of libido, and
12 nervousness, correct, sir?

13 A. That is what it reads, yes.

14 Q. Now, this loss of libido you got from a number of
15 these men, did you not, sir?

16 A. Yes, we did.

17 Q. Matter of fact, I think you listed it as one of the
18 -- you haven't got it listed there, but it is-- at least not
19 the one I can see.

20 A. We have listed it in the subacute manifestations of
21 the illness.

22 Q. Well, I don't see it in 1692A, do you, sir?

23 A. No, that's the acute. That would only --

24 Q. I understand that, Doctor.

1 A. It wouldn't be in there.

2 Q. We don't see it in 1692C, do we, sir?

3 A. That's the long-term effects, sir.

4 Q. Doctor, we don't see it in that exhibit, do we,
5 sir?

6 A. No, but those are long-term effects. We're not
7 talking about that.

8 Q. I understand that, Doctor. And Exhibit 1692B,
9 which is the subacute or subchronic effects, you don't see it
10 there either, do you, sir?

11 A. I don't see it there, no.

12 Q. Doctor, I thought you said it was there?

13 A. Well, it should be there.

14 Q. Indeed it should be there, shouldn't it?

15 A. Yes, it should be there.

16 Q. This is something that you published to the world,
17 is it not, sir, and you've told the people the subacute
18 effects and loss of libido is not there, is it, Doctor?

19 A. It isn't in that one, but it's described in our
20 records.

21 Q. I know it's described in your records. There's no
22 question about that, Doctor, but we're discussing what you
23 published, what you told the world at this point in time.

24 A. It's described in the paper, sir.

1 Q. It wasn't described in that one, was it?

2 A. I would have to go to the paper itself if you want
3 to pull it out.

4 Q. It wasn't described in that table, was it, Doctor?
5 We'll get to the paper eventually, but it wasn't described in
6 that table, was it, sir?

7 A. I don't see it there. It's described in the
8 hallmark paper on chloracne, it's described in here.

9 Q. Doctor, I'm sure it may be, but my question --

10 A. It's also described in the paper from which that is
11 taken.

12 Q. Doctor, that may be, but my question is it's not
13 listed in that table, is it?

14 A. That doesn't mean that we haven't described it in
15 our reports.

16 Q. Doctor, I'm not quarrelling with what you have or
17 have not done in the paper. You have -- Mr. Heineman has
18 given you this exhibit, and you have testified to this jury
19 and they use it with this jury that these are-- this is what
20 you sworn to the jury in this case is the subacute or
21 subchronic effects of dioxin exposure, isn't that correct,
22 sir?

23 A. That's true.

24 Q. Now, you didn't tell this jury that loss of libido

1 is also one of these effects, did you, sir?

2 A. I did, too, sir.

3 Q. You did?

4 A. I did on direct testimony when I was asked to
5 describe the findings in my reports. I read it and it's in
6 the record.

7 Q. You read it, Doctor?

8 A. I read it from here, and it's in the record.

9 Q. It's in the record, Doctor? I won't quarrel with
10 you --

11 A. It's in the transcript.

12 Q. Well, we'll look for it in a moment, Doctor, but
13 this was something that you said they had initially in your
14 report?

15 A. I told the jury that when I read from this report.

16 Q. But what you have in evidence, Doctor, is an
17 exhibit that gives you these health effects, and it doesn't
18 list it, does it,, sir?

19 A. Not in those charts.

20 Q. Now, Doctor, the next person that you described is
21 a Paul Willard, correct, sir?

22 A. Yes.

23 Q. Now, Willard entered the building a few hours after
24 the exposure, but he started out with -- just in six weeks he

1 started out with a papular eruption in the back of the right
2 leg and then an aching pain in the calf of the leg, correct?

3 A. Right.

4 Q. But he didn't get any chloracne then until mid
5 August, did he, sir, or at least he wasn't aware of it until
6 that time?

7 A. The papular eruption and papulotele fossa could
8 very well have been chloracne.

9 Q. Indeed it could have been.

10 A. Yes, sir.

11 Q. But you point out in this document, sir, that it
12 wasn't until mid August that he was aware of comedones,
13 cystic nodular and pustular eruptions of face and neck, back,
14 abdomen, and penis, correct, sir?

15 A. Yes.

16 Q. And, Doctor, he experienced, before he got the
17 clear case of chloracne he experienced pain in the calves,
18 didn't he, sir?

19 A. He said he did.

20 Q. And they increased, this pain increased, no
21 chloracne, but the pain increased until the first part of
22 June -- it was July, I'm sorry, it was so intense that he was
23 unable to walk, correct, sir?

24 MR. HEINEMAN: Objection, Your Honor, may counsel

1 approach the bench?

2 THE COURT: Yes, you may.

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

5 MR. HEINEMAN: On that question, that question Mr.
6 Carr just said, prefaced the question by saying no chloracne
7 at the time of the pain of the leg or calf was experienced
8 after this witness has previously said just a moment ago that
9 the eruption that this man had in the skin at the time that
10 he experienced the pain of the leg was --

11 MR. CARR: No, he said it may have been.

12 MR. HEINEMAN: And you said indeed it may have been,
13 and then you prefaced that question by saying and no
14 chloracne at that time. That is absolutely false, it's a
15 misstatement of what this witness' testimony was.

16 MR. CARR: You want to talk so the jury can hear
17 everything you say?

18 MR. HEINEMAN: They're not hearing me, Mr. Carr.

19 THE COURT: You are getting loud.

20 MR. HEINEMAN: This is a clear misstatement of what
21 this witness testified to, and it's done with the express
22 intention of misleading them, and I object to it. It's
23 totally contrary to what the witness just said.

24 THE COURT: No, it's not. Overruled.

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

2 Q. Doctor, the witness -- the patient clearly said to
3 you, was it -- did he not, that he had a papular eruption in
4 the back of the right knee, and it's described as a rash?

5 A. Papular eruption at the -- in the popliteal fossa
6 of the right leg.

7 Q. It's described as a rash, is it not, sir?

8 A. Yes.

9 Q. A rash is not chloracne, is it, sir?

10 A. This man wouldn't have described it as chloracne.

11 Q. Doctor, could you answer my question please. A
12 rash is not chloracne, is it, sir?

13 A. It could very well be chloracne.

14 Q. It could be a precursor to chloracne, Dr. Suskind.

15 A. It could be chloracne.

16 Q. You mean to say that the plaintiffs at Sturgeon,
17 the one's that have reported rashes had chloracne?

18 A. No, but this man had chloracne the way he described
19 it.

20 Q. Doctor, are you saying that a rash can be chloracne
21 or not?

22 A. This papular eruption --

23 Q. My question is can a rash be chloracne?

24 A. This rash could be chloracne, and it was.

1 Q. Can a rash be chloracne, Dr. Suskind?

2 A. A rash might be chloracne.

3 Q. Then it's possible, I take it, that those
4 plaintiffs who had rash, rashes following their exposure to
5 the chemicals involved in this case might have chloracne.
6 Dr. Carnow didn't describe a single one as chloracne. Are
7 you saying now that they might have chloracne?

8 A. No, I'm not.

9 Q. All right.

10 A. But this one did.

11 Q. Doctor, the chloracne that came out here according
12 to the -- it's comedonal, it's cysts, it's nodular, it's
13 pustular eruptions that you describe as chloracne, isn't that
14 correct, sir?

15 A. That is correct.

16 Q. Isn't that what chloracne is? And this didn't occur
17 in this man until mid August so far as he was aware, isn't
18 that correct, sir?

19 A. That, that aspect of it didn't occur until August.

20 Q. Now, what he had before that was repeated bouts of
21 pain that increased intensity with time, correct, sir,
22 sometimes aching so intense that he couldn't walk, and he
23 entered a hospital and remained for 16 days, correct, sir?

24 A. That was after he developed his chloracne.

1 Q. Doctor, where does it say that? It says during the
2 first part of July the aching was so intense that he was
3 unable to walk, and he entered a hospital where he remained
4 for 16 days. Isn't that what it says?

5 A. That's what it says.

6 Q. It doesn't say in mid August or after he developed
7 his chloracne, did it, sir?

8 A. No, it does not.

9 Q. It says during the first part of July this occurred
10 and he entered a hospital where he remained for 16 days,
11 isn't that correct?

12 A. That is true.

13 Q. And, Doctor, he was treated with injections and
14 within a week his pain subsided, correct, sir?

15 A. That's what it reads.

16 Q. So far as your record is concerned this occurred
17 prior to mid August, did it not, sir?

18 A. Would you repeat the question please.

19 MR. CARR: Could you read question to him please,
20 Marsha.

21 (The court reporter read back the last question.)

22 A. According to the patient's history, yes.

23 Q. Doctor, he was also admitted to a hospital six
24 weeks before you saw him, correct?

1 A. Yes.

2 Q. And at that time he had severe pain in the chest,
3 back and neck pain and had difficulty in breathing, correct,
4 sir?

5 A. Yes.

6 Q. He was treated again with injections, and since
7 that time he had not had any recurrence of thoracic or the
8 cervical pain, but he still had the pain behind the right
9 knee, correct, sir?

10 A. That is what it reads, how it reads.

11 Q. He had complaints of insomnia and nervousness?

12 A. Yes.

13 Q. Now then, Doctor, at the time you saw this man he
14 had chloracne, he had a dull ache behind his right knee, he
15 had insomnia and nervousness. Now, that's all he had, is
16 that correct, sir?

17 A. At the time that he was admitted to this -- to our
18 hospital he did complain of aches and pains, and there was no
19 pain in the cervical area pain or the thoracic area, but he
20 had a pain in the right knee.

21 Q. That's what I asked you, what he had at the time
22 you saw him was pain behind the--

23 A. That's what he complained about.

24 Q. Dr. Suskind, please let me finish my question.

1 What he had at the time you saw him was pain behind the right
2 knee, chloracne, insomnia and nervousness?

3 A. Yes.

4 Q. And that's all that he had?

5 A. No, that's not all that he had.

6 Q. What else did he have, Doctor, according to this
7 report at that time?

8 A. Well, if you look at the clinical -- if you look at
9 the clinical examination and the laboratory examination, you
10 will find that he had more.

11 Q. Well, what did he have?

12 A. He had an enlarged tender liver,.

13 Q. Doctor, that's findings that he had. He had a lot
14 of problems.

15 A. You asked what did he have. He had a finding.

16 Q. All right, Doctor, you're right, I wasn't precise
17 enough for you. The complaints that he had, that which was
18 bothering him at the time you saw him, the complaints that he
19 had was insomnia, nervousness, and aching behind the right
20 knee.

21 A. Plus the chloracne.

22 Q. Plus the chloracne, correct, sir?

23 A. Thank you.

24 Q. Is that correct, sir?

1 A. Yes, that's correct.

2 Q. Now, Doctor, the next man that you saw was Jesse
3 Stiehl. He told you that he worked in Building 41 during the
4 last week in June. Now, that's a couple of months after the
5 explosion, isn't it, sir?

6 A. Yes.

7 Q. And he worked on the pipes and fittings that had
8 been part of that original installation, did he not, sir?

9 A. Not until July, yes.

10 Q. And during the second week in July he noticed an
11 eruption, did he not?

12 A. Yes.

13 Q. And after he was treated with penicillin, he
14 noticed that it developed on his face, buttocks, neck,
15 shoulders, and so forth, correct, sir?

16 A. Correct.

17 Q. He returned to work in early August and felt weak
18 and lightheaded?

19 A. That's in the record.

20 Q. And his skin eruption gradually became more severe?

21 A. That's in the record, sir.

22 Q. And what he -- complaints that he had when you saw
23 him was complains of insomnia -- oh, he had tenderness in the
24 right upper quadrant, did he not?

1 A. Yes.

2 Q. In addition, he had insomnia and nervousness and a
3 weight loss?

4 A. He claimed that he had weight loss, yes.

5 Q. So he, too, his primary complaint at that time when
6 you saw him in October of '49 was this insomnia and
7 nervousness and weight loss?

8 A. And pain in the abdomen, sir.

9 Q. And the pain in the abdomen and chloracne, correct,
10 sir?

11 A. Yes.

12 Q. Jonathan Hurley that you saw was a horse of a
13 different color, wasn't he, sir, as compared to the men that
14 you have just testified about Williard, Stiehl and McLanahan?

15 A. No.

16 Q. Oh, no?

17 A. No.

18 Q. Doctor, he had a large amount of problems as
19 compared to these other three men, did he not, sir?

20 A. He had some additional problems.

21 Q. Doctor, he indeed had additional problems and a
22 number of them, didn't he, sir?

23 A. He had at least one major additional problem.

24 Q. Well, he had certainly more than that, but we'll

1 get to that in a moment.

2 A. Well, I would --

3 Q. We'll start with, Doctor, he washed down the
4 autoclave after he -- oh, he had only visited the building a
5 few hours after the explosion, but it wasn't until six weeks
6 later that he was assigned to wash down the autoclave,
7 correct, sir?

8 A. Yes.

9 Q. Now he wore at that time, he wore a respirator,
10 goggles, gloves and coveralls, didn't he, sir?

11 A. He said he did.

12 Q. Well, again you take him to be truthful, don't you,
13 sir?

14 A. One doesn't know whether or not the hygiene, even
15 though they --

16 Q. Doctor, my question is did you take him to be
17 truthful or not?.

18 Q. Yes, he was a truthful man.

19 Q. I'm sorry, Doctor, but I can't hear what you-- the
20 jury may hear what you're saying and if you say it when I'm
21 talking, I don't know whether you're saying something proper
22 or improper, the reporter can't get it, the Judge can't hear
23 it, counsel can't hear it. Would you do us a favor, because
24 she has to get it for her to do her job. Could you do us a

1 favor and when I'm asking a question, that you won't talk?

2 A. Yes, sir.

3 Q. Thank you, Doctor. I appreciate that. Now,
4 Doctor, Jonathan Hurley developed after he -- even though he
5 wore this protection that he told you that he wore, he
6 developed problems two weeks following the assignment, didn't
7 he, sir?

8 A. He said he did, yes.

9 Q. Doctor, this is a man who has been protected as
10 well as he knows how to protect himself with the equipment
11 that he's got, and this man develops chloracne and a large
12 amount -- well, you won't agree that it's a large amount of
13 problems, but serious problems, doesn't he, sir?

14 A. He develops serious problems.

15 Q. Doctor, he started developing these problems six
16 weeks after the incident when he got the severe aching pains
17 in his right hip, right and left feet, correct, sir?

18 A. Yes.

19 Q. And this was based upon one time of washing down an
20 autoclave after having the protection that we discussed,
21 isn't that also correct, sir?

22 A. Yes.

23 Q. Doctor, he was hospitalized --

24 A. He developed chloracne first.

1 Q. Yes, indeed.

2 A. Thank you.

3 Q. He was hospitalized in June for ten days for his
4 pains in these lower legs, correct, sir?

5 A. Yes.

6 Q. And he became irritable?

7 A. Umhm.

8 Q. He developed fatigue with slight exertion?

9 A. Umhm.

10 Q. Insomnia, he became emotionally disturbed, he was
11 unwilling to talk to people and cried frequently. He had an
12 emotional upset that lasted for three weeks, correct, sir?

13 A. That is what the record reads.

14 Q. Doctor, again that is what the man told you and
15 that is what you believe to be true, isn't that correct, sir?

16 A. Correct, sir.

17 Q. Yes. Now, he got -- he developed -- well, for one
18 thing he had been unable to work since the beginning of
19 August because of his problems, correct?

20 A. Yes.

21 Q. And he also developed lobar pneumonia, didn't he,
22 sir?

23 A. Yes.

24 Q. And at the time of admission he had the progressive

1 chloracne, did he not?

2 A. Yes.

3 Q. He had persistent pain on the front of the -- both
4 lower legs to the tip of his toes, didn't he, sir?

5 A. Yes.

6 Q. He had numbness, he had nervousness, he had
7 insomnia, and he had fatigue, didn't he, sir?

8 A. Yes, sir.

9 Q. And, Doctor, on this man you called in a
10 neuropathologist, didn't you, and a neurologist?

11 A. Yes, we did.

12 (Plaintiffs' Exhibit 1729 marked for
13 identification.)

14 Q. Hand you now what's been marked Plaintiffs' Exhibit
15 1729 and ask you if that is not a copy of a report you
16 received from the neuropathologist relating to the nerve
17 biopsy that was performed upon Jonathan Hurley.

18 A. It is a duplicate of the nerve biopsy on Mr.
19 Jonathan Hurley, which appears on Page 13 and 14 of the
20 original report.

21 MR. CARR: Your Honor, I'll offer that -- I think
22 1694 is already in evidence so I won't need to offer this,
23 but I'd like to pass it to the jury.

24 THE COURT: All right.

1 (Exhibit passed to the jury).

2 Q. Doctor, the examination by the neurologist that
3 took place at the same time, the results of that examination
4 is contained on Page 9 that's not passed to the jury, is it
5 not, sir?

6 A. I believe that that describes what both Dr. Ash as
7 well as the neurologist found on a neurological examination.

8 Q. And what they found with regard to Jonathan Hurley
9 was that he had with regard to his blood vessels or at least
10 Dr. Ash's findings if it was not the neurologist's finding
11 that he had thickened tortuous blood vessels, correct, sir?

12 A. I assume that this was in looking at his eyes,
13 cause that's where you do find thickened tortuous vessels.

14 Q. No, Doctor. He describes the eyes in the -- about
15 five lines, ten lines down from the top of that column where
16 he says the eyes on the fundoscopic had narrow tortuous
17 vessels.

18 A. Right.

19 Q. Farther down he describes the vessels in the neck
20 as thickened and tortuous, does he not?

21 A. It doesn't say neck here. Where does it say neck?

22 Q. Sir?

23 A. Where does it say neck?

24 Q. It's right beneath the neck, lymphatic vessels?

1 A. No, the neck -- this is a -- this is a neck
2 lymphatics, this is neck and then the lymphatics and then
3 vessels.

4 Q. Yes. He describes the vessels there as thickened
5 and tortuous, doesn't he, sir?

6 A. Yeah, but I'm not so sure, sir, that refers to the
7 neck vessels, but whatever it may, he did have
8 arteriosclerosis. He was 56 years old, sir.

9 Q. Doctor, my question, if you could direct your
10 attention to my question, is the fundoscopic examination he
11 had narrow tortuous vessels and in his further examination he
12 had thickened tortuous vessels, did he not?

13 A. Yes.

14 Q. And then the neurological examination found that on
15 the deep tendon reflexes they were hyperactive in the lower
16 extremities, correct, sir?

17 A. Umhm.

18 Q. That would be on both sides, wouldn't it, sir, not
19 just on one side?

20 A. I believe so.

21 Q. And he found as far as his sensations were
22 concerned that he had diminished to absent sensation to
23 touch, pain, and vibration, did he not, sir?

24 A. Yes.

1 Q. He found or somebody also found that he was nervous
2 and had insomnia. I suppose that's a finding of Ash's, is
3 that correct, sir?

4 A. Yes.

5 Q. Now, Doctor, the nerve biopsy report shows, first
6 of all, there's a diffuse marked increase in collagen. Now,
7 diffuse means widespread, doesn't it, sir?

8 A. Yes, it does.

9 Q. And marked means quite a lot or very noticeable?

10 A. Yes.

11 Q. And collagen is what, sir?

12 A. It's the fibrous connective tissue, which may
13 result from scarring, from an inflammatory process followed
14 by scarring.

15 Q. Doctor, he goes on to say that he found no evidence
16 of inflammatory cell infiltration, doesn't he, sir?

17 A. Right, but this could be an aftermath.

18 Q. And, Doctor, he goes on to point out that the
19 myelin sheaths in these nerves are scanty and appear to be
20 swollen and distorted in many cases, correct, sir?

21 A. Correct.

22 Q. And some of deeper blood vessels appear to show
23 fibrous thickening, right, sir?

24 A. Yes.

1 Q. Of their walls with some narrowing of the lumina?

2 A. Yes.

3 Q. He says that the changes in the nerves were
4 confirmed by a stain that demonstrated, that was done to
5 demonstrate the neurofibrous, correct, sir?

6 A. Yes.

7 Q. Now, the neurofibrous, Doctor, is actually the
8 nerve tissue itself, isn't it, sir, that's what make up the
9 nerves?

10 A. Yes.

11 Q. It's not the sheath, it's not -- the myelin is the
12 sheath, isn't it, sir?

13 A. Right.

14 Q. The myelin surrounds the nerves and it's called a
15 myelin sheath, but the nerve itself are these neurofibril
16 tissues, correct, sir?

17 A. Yes, I believe so.

18 Q. He points out -- I'm sorry?

19 A. Yes.

20 Q. He points out that there appeared to be a diffuse
21 -- that means widespread -- loss of this nerve tissue,
22 correct, sir, in many of the nerves, right?

23 A. Yes.

24 Q. And the nerve tissue that was remaining, not

1 obviously the ones that are gone, that are lost, he can't
2 describe, but the ones that remain show distortion. What
3 does that mean?

4 A. Not normal.

5 Q. Tortuosity?

6 A. Skewed up.

7 Q. Tortuosity, what does that mean, sir?

8 A. That means that the, instead of being straight, it
9 has curves in it.

10 Q. And he also says that the remaining nerve fibers
11 have localized swelling, doesn't he, sir?

12 A. Yes.

13 Q. And, Doctor, he goes on to demonstrate another
14 stain shows diminution in the number of the sheaths in these
15 nerves with swelling and distortion, correct, sir?

16 A. Yes.

17 Q. And they -- another stain demonstrates diffuse loss
18 of the nerve fibers as seen in the bundles, but that
19 particular stain was not too -- he says either that stain is
20 not too satisfactory or else the neurofibrils have been
21 completely destroyed, correct, sir?

22 A. That's what it reads.

23 Q. Because in wide areas of the tissue no nerve fibers
24 are seen, correct, sir?

1 A. Yes.

2 Q. And he says again the appearance of the nerves
3 throughout show that it's a peripheral neuropathy associated
4 with destruction of the myelin sheaths and nerve fibers and
5 replacement by connective tissue, which gives the nerve a
6 more cellular appearance, correct, sir?

7 A. That's what it says.

8 Q. Now, the destruction of the nerve fibers is
9 discussed throughout, and it is an important finding, isn't
10 it, sir?

11 A. Both the destruction of the myelin as well as the
12 fibrils are part of the process of peripheral neuropathy.

13 Q. Doctor, my question is that he discusses the
14 destruction of the nerve fibers throughout this report,
15 doesn't he, sir?

16 A. Yes.

17 Q. And it is an important finding, isn't it, sir?

18 A. It's an important finding in Mr. Hurley.

19 Q. And it's a finding insofar as you're concerned that
20 others should be told about, isn't it, sir?

21 A. A finding which we reported.

22 Q. Doctor, the table that you have here, does it make
23 any mention about the nerve tissue being destroyed?

24 A. It -- it has myelin degeneration on biopsy.

1 Q. That's correct.

2 A. It has neuromuscular symptoms--

3 Q. Yes, that's also correct.

4 A. And peripheral neuropathy and myolin degeneration
5 with or without the neurofibrils being disturbed is
6 characteristic of peripheral neuropathy.

7 Q. I'm not asking you that question, Doctor.

8 A. Yes, you are.

9 Q. Does this table discuss the destruction, does it
10 say that the nerve fibers were destroyed?

11 A. That table doesn't say that, but it doesn't mean
12 anything.

13 Q. Doctor, it does say that the myolin--

14 A. The table says --

15 Q. Excuse me, Doctor. It does say, does it not, that
16 myolin sheath was degenerated?

17 A. Yes, it does.

18 Q. But another laboratory finding, not a clinical
19 feature, but another laboratory finding was the destruction
20 of the nerve tissue, wasn't it, sir?

21 A. Destruction of some of the fibrils, yes.

22 Q. Well, it just doesn't say some. It says diffuse
23 loss of neurofibrils, doesn't it, sir?

24 A. Yes, it does.

1 Q. It doesn't say a little loss, it says a diffuse
2 loss, doesn't it?

3 A. Yes.

4 Q. Do the words diffuse loss of nerve tissue appear
5 here in one of your reported laboratory findings?

6 A. It does not.

7 Q. But it was indeed a reported laboratory finding,
8 wasn't it, sir?

9 A. It was one of the laboratory findings in one man,
10 right.

11 Q. Well, the myelin degeneration was a laboratory
12 finding in one man as well, wasn't it, sir?

13 A. Yes, it was.

14 Q. But it was reported in the laboratory findings,
15 wasn't it, sir?

16 A. Yes, it was in this particular chart.

17 Q. But the nerve destruction wasn't reported, was it,
18 sir?

19 A. We reported this in our original paper.

20 Q. Doctor, I'm sure you reported it in your original
21 paper. That's what we're reading from is your original
22 paper, but, Doctor, I'm talking about and I'm asking you a
23 question that you came up in front of this jury and which has
24 been published and printed elsewhere so that the world can

1 see what the laboratory effects are, human health effects
2 from TCDD exposure, and you said to the world and to this
3 jury that there is myelin degeneration on biopsy, didn't you,
4 sir?

5 A. Yes, sir.

6 Q. But you did not say to the world in this exhibit
7 nor to this jury that the nerve was destroyed, did you, sir?

8 A. We did not.

9 Q. Excuse me, could you-- You did not, correct, sir,
10 is that your answer?

11 A. We did not. We said that he had peripheral
12 neuritis.

13 Q. Peripheral neuritis is pain, isn't it, sir? You can
14 have neuritis without having your nervous tissue destroyed,
15 can't you, sir?

16 A. In this instance --

17 Q. Doctor, could you answer my question please, sir?

18 A. You might.

19 Q. Yes. And you can have a neuropathy without your
20 nerve tissue being destroyed, can't you?

21 A. You might.

22 Q. And you can have pains in your legs without nerve
23 tissue being destroyed, can't you, sir?

24 A. You might.

1 Q. But, Doctor, in this case this man's TCDD exposure
2 caused not just degeneration of the myelin sheath, but it
3 caused destruction of the nerve tissue, didn't it, sir?

4 A. In one person.

5 Q. Doctor, did I ask you in ten persons? I said in
6 this case, did I not, Dr. Suskind?

7 A. Yes.

8 Q. In this case this man had his nervous tissue
9 destroyed, right, sir?

10 A. Had some of his nervous tissue destroyed.

11 Q. Doctor, how many biopsies did you take of these
12 Monsanto workers? How many men's nerves did you examine by
13 biopsy?

14 A. We only examined one.

15 Q. Indeed. In a hundred percent of the cases that you
16 examined at Monsanto at Nitro, a hundred percent of that that
17 you examined by biopsy had nerve destruction, didn't they,
18 sir?

19 A. Would you repeat the question, sir.

20 Q. One hundred percent, that is, the one, because you
21 only examined one, and that is a hundred percent, isn't it,
22 sir, in a hundred percent of the cases where you took nerve
23 biopsies you found destruction of the nervous tissue, didn't
24 you, Dr. Suskind?

1 A. A hundred percent is not characterized by one.

2 Q. Isn't it?

3 A. No.

4 Q. Well, how would you characterize it?

5 A. Just one.

6 Q. Doctor--

7 A. One out of four.

8 Q. You only examined --

9 A. One out of--

10 Q. You examined one out of four, one out of 200, one
11 out of a 150, you only took a biopsy from one, didn't you,
12 sir?

13 A. Why don't you ask me why?

14 Q. Doctor, you only took--?

15 MR. CARR: Your Honor--

16 THE COURT: Doctor, you were not -- that remark was
17 volunteered and was totally improper. Don't do it again.

18 Q. Doctor, you had all kinds of people complaining
19 about pain in the legs, didn't you, sir?

20 A. Yes.

21 Q. And you took a biopsy from one of all of those
22 people, didn't you, sir?

23 A. Yes.

24 Q. And that one biopsy revealed nerve destruction,

1 didn't it, sir?

2 A. Yes.

3 Q. Doctor, you didn't report that in this table, did
4 you, sir?

5 A. We didn't list it in that table. We reported it in
6 papers.

7 Q. Doctor, you reported it in papers, did you, sir?
8 Did you report it in the human health effects, Plaintiffs'
9 Exhibit 1467?

10 A. I haven't looked at it recently, but this report --
11 MR. CARR: Would you give the witness Plaintiffs'
12 Exhibit 1467?

13 A. We reported peripheral neuritis of which that is
14 characteristic.

15 Q. I know that, Doctor. My question though is directed
16 at did you report in your health study, human health effects
17 of 2,4,5-T, did you report that you had found nerve tissue
18 destroyed by the TCDD?

19 A. No, we did not.

20 Q. Doctor, could you look -- this was an article that
21 was published in the Journal of American Medical Association,
22 correct, sir?

23 A. Yes.

24 Q. And no doctor that read this report could be aware

1 of that you reported and found on biopsy nerve destruction in
2 this worker, correct, sir?

3 A. In one person, right.

4 Q. Sir?

5 A. Right, in one person, you're right. I agree with
6 you.

7 Q. Doctor, you have said a number of times one
8 person. I'm sure you want this jury to be aware. This jury
9 is aware and has always been aware from the beginning that
10 it's one person. I assure you it's not necessary for you to
11 continue to repeat it. We all know that it's one person. I
12 know that it's one person. My question is, sir, you did not
13 report even that one person finding to the American
14 physicians, did you, sir?

15 A. No, we did not.

16 Q. In this article. Doctor, you had another article
17 published dealing with this -- these people exposed to this
18 dioxin, did you not, sir?

19 A. What paper are you referring to?

20 Q. The mortality experience, the Zack Suskind study?

21 A. Yes.

22 Q. The one study 1467 is the Suskind Herzberg study.
23 The other study is the Zack Suskind study. That is
24 Defendant's Exhibit 62. Could you give-- do you have it

1 there, Defendant's Exhibit 62?

2 A. Thank you.

3 Q. Could you describe, Doctor, could you look at that
4 and tell us whether or not you announced to the world there
5 that you had a finding of nerve tissue destruction from
6 exposure to dioxin?

7 A. We don't describe the --

8 Q. Doctor, could you answer my question please so that
9 I do not have to repeat it?

10 A. No, we do not.

11 Q. Doctor, you had a chapter written in a book, didn't
12 you, sir, Dioxins and the Environment, I think you
13 mentioned? It's Defendant's 1692.

14 A. What's the question, sir?

15 Q. This Defendant's 1692 Chapter 17 from a book
16 entitled Dioxins in the Environment, is it not, sir?

17 A. Right.

18 Q. And that is a book that was published from papers
19 presented by a number of authorities on dioxin at a meeting,
20 I think you said at Michigan University or Michigan State
21 University, correct, sir?

22 A. Michigan State University.

23 Q. Michigan State University. Correct, sir? That was
24 a meeting held in '83 and the book was published in when,

1 sir, '85?

2 A. '84.

3 Q. '84 or '85. Doctor, you delivered this paper.
4 orally and in writing, didn't you, sir?

5 A. Yes.

6 Q. And other authorities, there were a large number of
7 authorities that met at that meeting place?

8 A. Yes.

9 Q. And delivered their -- and all the authorities came
10 to hear, correct, sir?

11 A. There were some who were there, some authorities
12 were.

13 Q. Well, the people that were there and delivered
14 papers were all authorities in their respective fields,
15 weren't they, sir?

16 A. They were.

17 Q. And, Doctor, there were people in attendance there,
18 weren't they, sir?

19 A. Yes, sir.

20 Q. Your paper was distributed, wasn't it, sir?

21 A. At that meeting, no, it was not.

22 Q. It was later distributed in the form of the book,
23 you put it in the book, didn't you, sir, that this is a
24 chapter of?

1 A. Yes.

2 Q. And, Doctor, nowhere in this chapter do you mention
3 that the nerve fibers were destroyed, do you, sir?

4 A. No.

5 Q. Now, Doctor, we have now three publications and
6 none of them mention the fact that the nerve fiber in this
7 person was destroyed, isn't that right, sir?

8 A. You have pointed that out, sir.

9 Q. Is that correct, sir?

10 A. That is.

11 Q. I suggest to you, Dr. Suskind, I'd like to ask you
12 whether or not you agree that this is an effort on the part
13 of Dr. Suskind and the people that have used it in the past
14 to minimize the effects of TCDD on human beings?

15 A. Absolutely not. It's a false accusation.

16 Q. Was it an accidental omission, Dr. Suskind?

17 A. It was not an accidental omission.

18 Q. It was a deliberate on purpose omission, wasn't it,
19 sir?

20 A. No, it wasn't deliberate.

21 Q. Was it accidental or not? It was either
22 accidental, Dr. Suskind, or it was deliberate, knowing and on
23 purpose. Which was it, sir?

24 A. No, it could have been another.

1 Q. And the other could be what, Dr. Suskind?

2 A. After considering all the facts that these people
3 had peripheral neuritis clinically and myelin degeneration,
4 we indicated that the myelin degeneration might be in one
5 individual, histological exam of a nerve biopsy in a worker
6 and I'm quoting, with petal sensory loss showed myelin
7 degeneration. We have that in here.

8 Q. I understand that, Doctor.

9 A. We weren't covering anything up.

10 Q. But, Doctor, my question is referring and has
11 always referred to the fact that you have either by accident
12 or deliberately omitted the fact that the nerve tissues were
13 destroyed.

14 A. No, we have not. That is neither deliberate --
15 it's after a considered evaluation of all the findings, the
16 most important was the peripheral neuritis --.

17 Q. Then, Doctor--

18 A. Which we have described -- may I finish, sir?

19 Q. Please. Go ahead.

20 A. Most important finding in these people was the
21 clinical peripheral neuritis and in one instance we found
22 myelin degeneration and some nerve tissue damage so that in
23 expressing our findings we said, yes, these people all had,
24 many of them had peripheral neuritis, and we have evidence

1 that in one individual, in one individual who had petal
2 sensory loss there was myelin degeneration.

3 Q. Yes, I understand, you said that, Doctor. I agree
4 that's exactly what you said. You did not say--

5 A. That is a considered judgment on my part.

6 Q. All right. So it was--

7 A. As a physician and a scientist.

8 Q. Then it was deliberate that you did not mention the
9 nerve destruction?

10 A. It was a considered decision, sir.

11 Q. And a deliberate considered decision?

12 A. I said it was a considered decision, and I don't
13 like the word deliberate.

14 Q. Doctor, didn't you do it on purpose? Wasn't it done
15 by you of your own free will?

16 A. Oh, absolutely.

17 Q. To omit this reference to the nerve destruction?

18 A. It wasn't a matter of omitting. It was putting in
19 there what was important.

20 Q. Doctor, you did omit that statement, didn't you,
21 sir?

22 A. You have already said so, sir.

23 Q. Doctor, when did you decide that you should omit
24 this finding, sir?

1 A. I can't tell you at all when in any sense.

2 Q. Well, tell me this--

3 A. This is over a period of 30 years or more.

4 Q. When did you make the decision, sir, that you're
5 not going to report these nerve fibers destroyed?

6 A. There was no decision not to report the nerve
7 fiber. It was a decision to report --

8 Q. Doctor, you just got done telling us--

9 A. May I finish? It was a decision to report the
10 important, significant clinical and laboratory findings, and
11 that's what we did.

12 Q. Let me ask you this. When did you consider that
13 the nerve destruction was not an important laboratory
14 finding? When did you make that decision?

15 A. Not that it wasn't an important laboratory
16 finding. It didn't add anything to the diagnosis.

17 Q. Doctor --

18 A. It did not add anything to the diagnosis.

19 Q. Doctor--

20 A. And I think I'm a good judge of what has to be put
21 into a paper to -- so that the scientific reader understands
22 what the mechanism or the origin of the problem is. We knew
23 that they had peripheral neuritis.

24 Q. Did you conclude, Doctor, that it would mislead

1 these scientists to tell them that the nerve fiber was
2 destroyed?

3 A. No, not at all.

4 Q. What you concluded was that it was not a important
5 finding, didn't you, sir?

6 A. It was less important perhaps than the myelin
7 degeneration.

8 Q. Perhaps, sir? Doctor, the myelin was still there,
9 it was not destroyed, it was degenerated, it was still
10 there. The nerve fiber was destroyed, wasn't it, sir?

11 A. As a matter of fact--

12 Q. Excuse me, Doctor. The nerve fiber was destroyed,
13 wasn't it, sir?

14 A. There was some destruction of nerve fiber, which
15 could be secondary to myelin degeneration.

16 Q. Doctor, I'm not evenly quarrelling with that. The
17 point is --

18 A. I hope you're not.

19 Q. The myelin was there, all in degenerated form, but
20 the nerve tissue was destroyed, wasn't it, sir? Isn't that
21 correct, sir?

22 A. You have stated so, yes.

23 Q. Doctor, you determined, about what year did you
24 determine to commence omitting or did you ever mention the

1 nerve fiber destruction?

2 A. I can't remember, sir.

3 Q. Now, Doctor, let me suggest to you that you decided
4 about the time the Vietnam people started making claims
5 against Monsanto, that you decided then to omit the reference
6 to the nerve tissue destruction, because prior to that time
7 you had made it, not in anything that went out to the world
8 at large, but privately you had reported on more than one
9 occasion that the nerve fiber was destroyed, isn't that
10 correct, sir?

11 A. It is not, and that's a false accusation.

12 Q. Doctor, let's examine that.

13 A. It's a false accusation.

14 Q. Do you still have Exhibit 1728 there, sir, in front
15 of you? Do you, sir?

16 A. I have 29, which is the nerve biopsy. What's 28?

17 Q. It is your report in 1973 to the National Institute
18 of Health. You don't have it, sir? If you --

19 A. I have it here, I'm sorry.

20 Q. You have it, all right. And, Doctor, if you would
21 refer to that, on Page 4 you do report a peripheral nerve
22 biopsy revealed destruction of myelin sheaths and nerve
23 fibers, didn't you, sir?

24 A. Right.

1 Q. Wasn't it important there to omit it, Doctor? Did
2 you decide --

3 A. Why should we?

4 Q. Did you decide then to mention it?

5 A. This paper happens to be a paper about the
6 pathology of chloracne and other, other organ systems, and
7 it's described in more detail. The chloracne in here is
8 described in enormous detail.

9 Q. Doctor, I'm asking you about the statement. You're
10 reporting there that there was destruction of the myelin
11 sheaths and the nerve fibers. That's exactly what I'm asking
12 you, sir.

13 A. We have reported it here.

14 Q. In 1973 you reported it, didn't you, sir?

15 A. Right.

16 Q. Sir?

17 A. To this audience, yes.

18 Q. Now, by 1973, sir, were there any Vietnam claims?

19 A. I have no idea, sir.

20 Q. You don't have any idea, sir?

21 A. No, I have no idea.

22 Q. You don't know that the war was just over with, the
23 Vietnam veterans had just come back?

24 A. I would assume that there were claims, but I can't

1 tell you that I know that there were claims or how many
2 claims there were. I'm not in the VA.

3 Q. Doctor, in 1978 when you reported to Leon you also
4 mentioned, did you not, sir, that there were nerve fiber
5 destruction? Page 3 of Exhibit 1727?

6 A. Yes, I have indeed.

7 Q. So apparently there it was important that these men
8 be told of it, is that right, sir?

9 A. We simply described the findings more completely.

10 Q. Doctor, my question is you considered it important
11 to describe it at that time, did you not?

12 A. Not on the basis of importance. On the basis of
13 complete description of the laboratory and the pathology
14 findings. It was in here, yes.

15 Q. Doctor, you haven't mentioned this nerve fiber
16 destruction since that point in time, have you, sir?

17 A. Well, if I haven't, then I haven't, but I believe
18 it wouldn't have added anything if we did.

19 Q. Doctor, but what happened after that? Did the
20 Nitro case get filed after that, did the Sturgeon accident
21 happen after that, did the Times Beach incident all come up
22 after that?

23 A. Those incidents have absolutely nothing to do. I
24 don't know what you're talking about, sir, I really don't.

1 Q. They may have nothing to do with it?

2 A. They have absolutely nothing to do with it. These
3 are false, erroneous accusations.

4 Q. They may be, sir, they may be completely erroneous
5 and--

6 A. They indeed are.

7 Q. They may be completely false, but it is correct, is
8 it not, sir, that prior to 1978 you mentioned the destruction
9 of the nerve tissue, and you did not mention destruction of
10 the nerve tissue after 1978?

11 A. That's quite possible, but it has nothing to do
12 with what you have said.

13 Q. It was a considered judgment on your part so to do,
14 wasn't it, sir?

15 A. Only on the basis of what was important.

16 Q. Doctor, there's another area that you have
17 discussed in this report. It's about the phenolic odor of
18 the men that came together in a closed room. Do you recall
19 that, sir?

20 A. I do indeed.

21 Q. You testified here to this jury that after they
22 were scrubbed down in the hospital it disappeared?

23 A. Right.

24 Q. Doctor, this report was made after they had been in

1 the hospital and scrubbed down, wasn't it, sir?

2 A. Yes.

3 Q. And you described there that when they are in a
4 closed room together, they get this strong odor phenolic
5 compound, correct, sir?

6 A. Not after they been scrubbed down.

7 Q. Doctor, this report --?

8 A. It was before they were scrubbed down.

9 Q. Doctor, this report was made after they came out of
10 the hospital, wasn't it, sir?

11 A. The observations, yes.

12 Q. Doctor, wasn't this report--

13 A. Yes.

14 Q. -- Made after they came out of the hospital?

15 A. Surely.

16 Q. Had they not been scrubbed down in the hospital?

17 A. They had and they lost their odor in the hospital.

18 Q. Do you not describe, sir, that when these men are
19 in a closed room together, don't you use the word are, a
20 present tense, sir?

21 A. Umhm.

22 Q. In your report?

23 A. Umhm.

24 Q. When they are in closed room together, there is a

1 strong odor, which suggests a phenolic compound, but cannot
2 be identified with certainty. This odor is definitely not the
3 odor of sweat nor the odor of the skin lesions. While we
4 have been unable to prove it, we believe these men are
5 excreting a foreign chemical through their skins, correct,
6 sir?

7 A. That is what we said, it was a hunch.

8 Q. I'm sorry. And that's what you said was occurring
9 at that time, correct, sir?

10 A. When they were in the hospital room, but after --
11 by the time they got out, this didn't happen.

12 Q. Where does it say that, sir, cause what I read, the
13 document the way I read it, it says when they are in a closed
14 room together, and it says we believe these men are excreting
15 a foreign chemical. These are present tense words, aren't
16 they, Dr. Suskind?

17 A. That's what it looks like.

18 Q. That's what they are. They are present tense
19 words, correct, sir?

20 A. Umhm.

21 Q. And this is what you said after these men got out
22 of the hospital, isn't that right, sir?

23 A. Yes.

24 Q. And, Doctor, scrubbing would only take care of what

1 is on the skin and would not take care of that new material
2 that comes out, that's being excreted, would it, sir?

3 A. It might not. We don't know that they were
4 excreting anything.

5 Q. Doctor, that's what you hypothesized, that's what
6, you believed at that time?

7 A. But on --

8 Q. Doctor, that was your belief at that time, wasn't
9 it, sir?

10 A. Yes. It --

11 Q. Doctor, this was your belief after these men had
12 been scrubbed in the hospital on more than one occasion,
13 isn't that correct, sir?

14 A. No, it was on that occasion. We have never
15 mentioned it after that.

16 Q. Doctor, my question is referring to the scrubbing
17 in the hospital. You gave this as your belief after these
18 men had been in the hospital and scrubbed, isn't that
19 correct, sir?

20 A. No, it was when they were in the room before we
21 initiated therapy.

22 Q. Where does it say that, Doctor?

23 A. I can tell that that was so.

24 Q. Doctor, I know what you can tell me, but I'm

1 referring now to what you reported.

2 A. Well, this is what I remember, sir.

3 Q. Doctor, sometimes this is -- memories can be faulty
4 and fail after a number of years, can't they, sir?

5 A. My memory is not failure.

6 Q. I understand that, Doctor.

7 A. At fault.

8 Q. Doctor, did you ever put in writing anywhere that
9 you think it's just because these men didn't have a good
10 bath, a good scrubbing, cause that's what you told this
11 jury. You told this jury that this phenolic odor disappeared
12 after the men had got a good scrubbing in the hospital,
13 that's what you told us.

14 A. I did indeed and also there --

15 Q. Doctor, did you ever put that anyplace, did you
16 ever say anyplace else that? What are you referring to
17 there, Doctor?

18 A. I'm only referring to the --

19 Q. May I see what you're referring to?

20 A. I'm just referring to the report. It's the same
21 report you have.

22 Q. I understand that, Doctor.

23 A. That's the original.

24 Q. Better copy than mine.

1 A. Sorry.

2 Q. Doctor, it says from what I have just been reading
3 to you, does it, sir?

4 A. Nope.

5 Q. There's no mention any place in this exhibit, is
6 there, sir, that after they got the good scrubbing down they
7 didn't get this phenolic odor any more?

8 A. No, but it does say that they improved markedly --.

9 Q. Excuse me, Doctor.

10 A. -- With scrubbing and with therapy. That's what it
11 says.

12 Q. It says what, sir?

13 A. They all improved substantially during their stay
14 in the hospital.

15 Q. Doctor, I'm not quarrelling with that, am I? My
16 question to you, sir--

17 A. That includes the odor.

18 Q. Doctor, if you don't mind, Doctor--

19 A. That includes the odor.

20 THE COURT: Doctor, just answer the question.

21 A. Thank you.

22 Q. Doctor, is there any mention here that the odor
23 disappeared when they got the good bath that they couldn't
24 give themselves at home?

1 A. No.

2 Q. Your final report to Monsanto was that these men
3 when they're in a closed room together have a strong odor
4 which suggests a phenolic compound, isn't that right, sir?

5 A. That's what the report reads.

6 Q. Doctor, it was your belief then that the odor is
7 coming from the fact that they're excreting a foreign
8 chemical through their skins, isn't that right, sir?

9 A. It was just a possibility.

10 Q. Doctor, isn't that right, sir, isn't that what was
11 your belief at that time?

12 A. Yes.

13 Q. It wasn't just your belief, it was the belief of
14 Dr. Ash as well, wasn't it, sir?

15 A. Yes.

16 Q. And, Doctor, if they are excreting the foreign
17 chemical through their skins, if your belief is correct, that
18 means they have had to take that foreign chemical into their
19 system, doesn't it, sir?

20 A. Yes.

21 Q. Doctor, did you ever say to anybody that we have
22 anything in writing at any time that you no longer believe
23 they're excreting the foreign chemical from their skin until
24 you said it in this courtroom?

1 A. I'm not sure I understand the question.

2 Q. Did you ever report anywhere else that you no
3 longer believe that this chemical was being excreted from
4 their skin?

5 A. No, this was the only time we mentioned it.

6 Q. My question is did you ever report it any place
7 else that you no longer believe they're excreting it from
8 their skin?

9 A. No.

10 Q. Doctor, there's testimony in this case that some of
11 the plaintiffs in this case for months after the incident
12 occurred when they would leave Sturgeon and go to another
13 town, they could be identified as being from Sturgeon,
14 because of the phenolic odor that they carried with them. You
15 were aware of that, weren't you, Dr. Suskind?

16 A. I was absolutely not aware of that.

17 Q. You were not aware of that when you came into this
18 jury --

19 A. No, I was not aware of that.

20 Q. -- And said that a good scrubbing would get rid of
21 that phenolic odor?

22 A. No, I was not aware of it, and I don't believe it.

23 Q. Do you suggest that my clients are lying?

24 A. No, I'm suggesting that it's difficult to assume

1 that they had enough exposure like these people did, and the
2 level of exposure is important.

3 Q. Well, Doctor, it must not be important, because
4 you're now saying, you said to this jury that just a good
5 wash job, just a good bath gets rid--

6 A. These people were very heavily exposed.

7 Q. Doctor, if you don't mind, if they are heavily
8 exposed and it got in their system and you smell it, then
9 they're excreting it, aren't they, sir?

10 A. They might be. It was just a hunch.

11 Q. No, Doctor, it was more than just a hunch, because
12 you washed these people time and again in the hospital, and
13 they continued to have this odor when they were in a room
14 together.

15 A. That is not so.

16 Q. Isn't that what you said, Doctor?

17 A. No, that is not what we said.

18 Q. Show me where you did not say that, sir.

19 A. It said that when they are in a room.

20 Q. Yes.

21 A. It doesn't say that after they got cleaned up they
22 no longer did that, and I can tell you that that is the case.

23 Q. Doctor, it doesn't say that, does it?

24 A. No, it doesn't say that.

1 Q. What you said at the time you made this report, you
2 didn't say when these men were in a closed room before they
3 took a good hospital bath they exuded this strong odor, you
4 didn't say that, did you?

5 A. It wasn't just a hospital bath.

6 Q. Excuse me, Doctor, you didn't say that, did you,
7 sir?

8 A. No.

9 Q. What you said was when they are in the room
10 together, they exude this odor, didn't you, sir?

11 A. Yes.

12 Q. Now, Doctor, you, of course, as far as exposure to
13 the plaintiffs are concerned who have this same odor or had
14 this same odor, you only know what Monsanto has told you
15 about that, don't you, sir?

16 MR. HEINEMAN: Objection, Your Honor. May counsel
17 approach the bench?

18 THE COURT: Sure.

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

21 MR. HEINEMAN: Again Mr. Carr has stated that it is
22 the same odor. There's no evidence that it's the same odor,
23 and he's misstating what the testimony is. He's misstating
24 what the evidence is, and he's trying to mislead this

1 - witness, and he's trying to get some sort of statement in
2 front of the jury that the two odors are the same when
3 there's absolutely no evidence of it, and I object to it.

4 MR. CARR: I don't think I need to say anything
5 further, your Honor. The two are alike.

6 THE COURT: Objection is overruled.

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

8 THE COURT: I don't believe the question was
9 answered, Doctor. Would you answer the question please.
10 Would you answer the question please.

11 A. Would you repeat the question, sir.

12 MR. CARR: Would you read the question to him.

13 (The court reporter read back the last question.)

14 A. The answer is yes.

15 Q. Doctor, if the Nitro workers were excreting this
16 through their pores, as you originally believed they were,
17 that means that the chemicals they're excreting is within
18 their system, we've established that, haven't we, sir?

19 A. We have no -- no, we didn't establish that.

20 Q. We haven't established that?

21 A. No.

22 Q. Doctor, the odor they were giving you that you
23 noted, you noted months after their exposure, did you not,
24 sir, months after the accident?

1 A. Yes.

2 Q. And if this odor is coming from their system, that
3 means they took the chemical within their system, doesn't it,
4 sir?

5 A. It might.

6 Q. Well, Doctor, it can't get out of their system
7 unless it first gets in, can it, sir?

8 A. It could get into the skin and stay in the skin.
9 That's a possibility.

10 Q. That's not what you believed occurred though in
11 your report that you made in 1949, is it, sir?

12 A. Well --

13 Q. You didn't say that, did you, sir?

14 A. We suspected that they might be excreting a
15 phenolic or a foreign compound through the skin, which means
16 that it might come in, it might go into the sebaceous glands
17 and come out of it as well. It didn't have to get into the
18 system.

19 Q. Doctor, the sebaceous gland is part of the skin,
20 isn't it, sir?

21 A. Yes, it is.

22 Q. Doctor, you said in this report though that they
23 were exuding this, excreting this through their skins, didn't
24 you, sir?

1 A. Through the sebaceous glands.

2 Q. That means it's coming through the sebaceous
3 glands, doesn't it, sir?

4 A. It could come into the skin through the sebaceous
5 gland. The sebaceous gland happens to be the primary portal
6 of entry of chemical compounds.

7 Q. Doctor, it could then also be the primary portal of
8 exit, excretion of these compounds, couldn't it, sir?

9 A. If it gets into the skin through the sebaceous
10 glands.

11 Q. And, Doctor, it could get in there at the time of
12 the accident, go through the system and have these various
13 systemic effects, systemic intoxication, and you do agree
14 they had a systemic intoxication, don't you, sir?

15 A. They had systemic symptoms.

16 Q. Well, you called it intoxication in a number of
17 cases, haven't, you, number of places, haven't you, sir?

18 A. Yes, we did.

19 Q. This systemic intoxication occurred because
20 something got within their system, correct, sir?

21 A. In the skin, right.

22 Q. Sir?

23 A. Got within the skin, through the skin.

24 Q. And got in their system, didn't it, sir?

1 A. Yes.

2 Q. It affected their livers?

3 A. Umhm.

4 Q. Liver isn't part of the skin, is it, sir?

5 A. I don't think so.

6 Q. It affected their central nervous system. That's
7 not part of the skin, is it, sir?

8 A. We don't believe so.

9 Q. If affected their peripheral nervous systems, their
10 peripheral nerves. That's not part of the skin, is it, sir?

11 A. I don't believe so.

12 Q. So whatever got into them affected these things,
13 and then you said you believed that it's being excreted,
14 didn't you, sir?

15 A. That's what the report showed, sir.

16 Q. And that was your belief, wasn't it, sir?

17 A. That was our opinion at the time.

18 Q. Doctor, this same thing could have happened to
19 others, not just the Nitro people if others are giving off
20 the same odor. If it occurred at Nitro, it could occur at
21 Times Beach, it could occur in Vietnam, it could occur at
22 Sturgeon, it could occur anywhere if it occurred at Nitro,
23 could it not sir,?

24 A. It could occur depending upon the --

1 Q. Amount of exposure, amount of the chemical that's
2 taken in?

3 A. Precisely.

4 Q. Exactly right.

5 A. You're completely accurate, sir.

6 Q. So if the people at Sturgeon are in fact, in fact
7 have this odor, that means they-- and if it's coming through
8 their skin, that could mean that they have enough within them
9 or at least did on a temporary basis to give the odor, isn't
10 that correct, sir?

11 A. I don't believe they were exposed to --

12 Q. Doctor, I'm not asking you about your belief
13 because all you know is what Monsanto told you. I'm asking
14 you, sir, if it occurred at Nitro to these men, it could
15 occur to others, could it not, sir?

16 A. No, sir.

17 Q. Oh, it could not?

18 A. No, sir.

19 Q. The people at Nitro were unique?

20 A. Yes, sir.

21 Q. And only the people at Nitro are capable of--

22 A. Yes.

23 Q. How about BASF?

24 A. I don't know that they ever reported that.

1 Q. Don't know whether they reported what? They also
2 had systemic intoxication, didn't they, sir?

3 A. I don't know that they ever reported an odor the
4 way we did.

5 Q. Doctor, my question if there is foreign chemical--

6 A. We're talking about odor.

7 Q. Doctor, we're not talking about odor, we're talking
8 chemical within a body that one of the manifestations is an
9 odor, just one of the manifestations. We're not talking about
10 odor, I could care less about, it's simply a manifestation,
11 is it not, sir, in this case it was a manifestation, wasn't
12 it, sir?

13 A. In those four. We never saw it again sir.

14 MR. CARR: Your Honor would you ask the jury to be
15 instructed to disregard the last statement.

16 THE COURT: The jury is so instructed. I think this
17 is a good time to break. Ladies and gentlemen, we're going
18 to adjourn for the day, and I would remind you that we'll
19 start again tomorrow morning at 9:30. Remember you're not
20 supposed to read, listen to, or watch anything about this
21 case in particular or the subject matter in general in any of
22 the media. Court's adjourned. Gentlemen, could I see you at
23 the bench for a minute.

24 (At this time a conference was had at the bench out

1 of the hearing of the jury.)

2 MR. CARR: Your Honor, I would like to see all the
3 material that the witness has on the stand with him tonight
4 before we leave.

5 THE COURT: Any objection to that?

6 MR. HEINEMAN well, I have an objection to his
7 delaying the departure to see it.

8 THE COURT: Go ahead and see it.

9 MR. HEINEMAN: Your Honor, may I remind the Court
10 of the time when I asked to see everything Dr. Carnow had
11 with him that there -- and my recollection was the Court
12 denied me that opportunity.

13 THE COURT: That's not my recollection at all. Go
14 ahead and see it. Then I want to talk to you. I think you
15 had something you wanted to bring it up.

16 MR. HEINEMAN: Yes.

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

19 THE COURT: Okay. Doctor, you realize that that
20 last remark was the kind that I warned you about.

21 THE WITNESS: I'm sorry. I'm not altogether sure
22 about what the last remark --

23 THE COURT: That last remark was the kind, the
24 volunteered statement I warned you about. Do you understand

1 that, about how that was the only thing, you had not found it
2 since or a remark to that effect. You understand that.

3 THE WITNESS: Yeah, I understand that.

4 THE COURT: You understand the kind of remark I'm
5 talking about?

6 THE WITNESS: I understand.

7 THE COURT: I'll let you go on this one. It's the
8 last time.

9 MR. NASSIF: Your Honor, on the record, Dr. Suskind,
10 if -- and I think the Court would agree, if you get tired
11 late in the afternoon, you should tell the Court.

12 THE COURT: Sure.

13 MR. NASSIF: Because, you know, it's more difficult
14 for to you follow the Court's guidelines if you get
15 exhausted, and I thought you were pretty tired for about the
16 last half hour. I want you to know that in the presence of
17 the Judge that the Judge will understand that if after 4
18 o'clock or something you get exhausted.

19 THE COURT: You need a break after 4 o'clock or
20 whatever, that's no problem. If I don't get any indication
21 of that, I would assume there is no need.

22 THE WITNESS: Okay. Thank you.

23 THE COURT: Now you -- thank you, Doctor, you can
24 go. I believe you had something you wanted to bring up at

1 the end of Court today.

2 MR. HEINEMAN: Yes, Your Honor. I want to bring up
3 the matter that I made objection to in Court when Mr. Carr
4 mentioned it, that was the bringing up of these workers' comp
5 cases and the results of them in Nitro, West Virginia, and
6 I'd like to move for a mistrial at this time based upon his
7 mention of that. First of all, he has misrepresented what
8 the results of those workers comp hearings were. Secondly,
9 there is no issue relating to the decision that was made by
10 that Workers' Comp Commission which has any relevance or any
11 probative value in this case whatsoever. The sole purpose of
12 his making that statement was to inflame and prejudice the
13 jury in the hopes that somebody on that jury might be upset
14 that -- that those members of the union up there had some
15 disadvantage as a result of what Dr. Suskind testified to,
16 and the decision made by that body, that deliberative body
17 there could be based on a thousand different things totally
18 unrelated to Dr. Suskind's testimony as well, of course, as
19 it could be related to Dr. Suskind's testimony, but the fact
20 of the matter is that whether that board made a decision as
21 to the entitlements of those individuals under the Workers'
22 Comp Commission and what that decision was is totally
23 irrelevant to this lawsuit, and it was done solely to inflame
24 and prejudice the jury. We objected to it, the Court has

1 overruled my objection, I'm moving for a mistrial on that
2 basis. Secondly --

3 THE COURT: Let's do this one at a time. Mr. Carr,
4 do you have any response to that.

5 MR. CARR: Your Honor, I think it had materiality
6 with reference to the framework that the doctor was
7 testifying in. I don't recall the exact comment that he made
8 that called for that question or preceding that question, but
9 I was attempting to show that this witness had as part of a
10 long contact with Monsanto, had deliberately misrepresented
11 things that he knew were a fact. It was in the context of
12 what he testified to before the commission and what he was
13 testifying here today in an effort to impeach him or in the
14 process of impeaching him that it came out. Now, I would
15 certainly agree that what the commission did has no relevance
16 to the outcome of this case, and I don't recall the exact
17 context that it came in, that the situation called for, and I
18 don't think there's any dispute, at least I been told that
19 there's no dispute about the results that came in. Mr.
20 Siegfried tells me that they did go into the workmen's
21 compensation matter in direct examination.

22 MR. HEINEMAN: Of whom?

23 MR. CARR: Of Dr. Suskind.

24 MR. HEINEMAN: We certainly didn't mention -- I

1 don't recall going into it in direct examination.

2 MR. CARR: Him testifying at that time.

3 MR. SEIGFREID: On several occasions when you
4 inquired about the records of the workers' compensation cases
5 that you had.

6 MR. HEINEMAN: No, no, no.

7 MR. SEIGFRIED: Referred to those records in his
8 reports.

9 MR. HEINEMAN: The question was as to what
10 information was available to him when he did these studies
11 and part of the information that was available to him were
12 those people who had made workers' compensation claims for
13 chloracne.

14 MR. NASSIF: That referred to the 1979 studies, what
15 records were given to him in regards to his work in the '79
16 study. It had nothing to do with the testimony in '56.

17 MR. HEINEMAN: Nor does it have anything to do with
18 what the result of the matter was. And, Your Honor, at the
19 same time--

20 THE COURT: Wait a second. His testimony as to
21 whether in fact he testified there in the context of what he
22 testified I think was relevant. I don't think there's any
23 problem with relevancy on that. You may go ahead and finish
24 your argument if you have any more.

1 MR. CARR: Judge, I just don't think that what has
2 occurred is grounds for a mistrial. The witness -- I know
3 Mr. Heineman was in here the other day saying that the
4 witness was a witness for the commission and not a witness
5 for Monsanto. I'm not sure that that got on the record, but
6 I think it was on the record that Mr. Heineman represented to
7 us that this man -- when I said that he was a witness for
8 Monsanto, Mr. Heineman said no, he wasn't, he was a witness
9 for the commission, and I think -- I don't remember now what
10 context that came in, but I recall we were either at the
11 bench or in chambers when that conversation took place.

12 MR. HEINEMAN: I don't recall the jury being
13 present when we discussed that, however.

14 MR. CARR: But I've got really -- I just don't
15 think it's a mention that would have any effect or influence
16 upon what the jury does in this case.

17 THE COURT: It's your motion. Do you have any short
18 reply?

19 MR. HEINEMAN: No, sir, I have another point.

20 MR. NASSIF: Your Honor, I would like to say one
21 thing, and I don't want to double dip this, but I would like
22 to say this. As you recall, I know you take great notes and
23 as you recall, Mr. Carr hesitated about, I would say about a
24 minute or less, but between 30 seconds and maybe two minutes

1 before he asked this question. It was the last question he
2 asked. It was right before lunch. He almost broke, he made
3 a comment about something to the effect as we may want to
4 break for lunch, but then he asked this question. I think it
5 was deliberate, I think he considered what he was doing at
6 the time that he asked this question and that he went ahead
7 and asked it for effect to end the morning session on and
8 that was my review or observation of why this question was
9 asked, and I think that ought to be considered. It was not a
10 question that there was a direct response to something the
11 witness said in any way, shape or form.

12 THE COURT: Umhm. Well, that may be, but the point
13 is my opinion is that it was a proper question, it was within
14 the context of this person's testimony, completeness or lack
15 of completeness and in even larger context of his motivation,
16 interest or whatever as far as Monsanto testimony or Monsanto
17 inspired or directed or benefited testimony is concerned, and
18 however the effect went, I don't think there was anything
19 wrong with it, I think it was not improper. One is allowed
20 to do that with a witness and your motion for mistrial is
21 overruled on that basis, cause I think it was proper however
22 the timing on the effect was. Okay. Second point.

23 MR. HEINEMAN: Second motion for mistrial, your
24 Honor, it's also a motion for mistrial based upon an

1 additional reference that Mr. Carr made which he popped out
2 with before we had a opportunity to object to it, and that
3 was he asked this witness about having testified against in
4 Nitro against those six defendants or six plaintiffs who lost
5 the Nitro case. Now, again for the same reasons we said
6 before the outcome in that Nitro case, I assume, is
7 irrelevant and immaterial to the issues in this case, has no
8 probative value whatsoever, and the sole purpose of that was
9 the same reason he did the other, and that was to hope that
10 there's somebody on that jury that would be ticked off that
11 the boys in the union lost that case up there and that if it
12 was somehow derived from this witness' testimony. Whatever
13 that outcome was up there is entirely different from this
14 lawsuit, has no place in it, and I move for a mistrial for
15 his mention of that as well.

16 THE COURT: Any reply to that one?

17 MR. CARR: I don't know what boys in the union
18 counsel is referring to, cause I don't know anything about
19 any boys in the union, and the question again, I think, is in
20 the context of the examination that was taking place at that
21 time. This witness was putting himself forth as an impartial
22 scientist who's interested only in the pursuit of truth, and
23 I think it was important to point out that he has materially
24 assisted in the arriving at untruths, because he's

1 demonstrated at least a half a dozen instances here where he
2 has -- I'm not going absolutely falsely because of his age,
3 but he certainly hasn't come up with the right facts
4 pertaining to the record, what the records show, and I don't
5 see how that could in any way damage Monsanto, either of
6 those points can't damage Monsanto, because it shows in
7 effect that outcomes have been favorable to Monsanto on these
8 various issues, and I don't see anywhere that could be
9 considered so prejudicial as to require a mistrial, if indeed
10 it was in any sense prejudicial.

11 THE COURT: Again it's your motion, do you have a
12 short reply?

13 MR. HEINEMAN: Nothing, Your Honor, other than
14 questioning him about what his testimony was in another
15 matter is one thing. Questioning him about what the outcome
16 of that matter was is entirely different, and it has no
17 probative value. Well, I've said what I'm going to say.

18 THE COURT: Okay. I think this is the same as the
19 other, and I think within the context and purposes for which
20 it was asked were proper, and I don't think there was
21 anything wrong with it. The second motion for mistrial is
22 denied also.

23 MR. HEINEMAN: One more matter for the record very
24 briefly, Your Honor, and that is I have objected to Mr.

1 Carr's speech making throughout the course of this trial
2 unsuccessfully. The court has invariably overruled me, and I
3 think it is unfair to allow Mr. Carr to vilify this witness
4 in front of the jury, to provoke the witness intentionally
5 into anger by calling him a fraud and things of that kind
6 totally unconnected with the question, make a speech to the
7 jury in which he claims this man has committed some sort of
8 fraud. There's no basis given for it at all. There's no
9 basis in the record for it at all. He provokes him into anger
10 and then calls to the Court for help when the guy lashes out
11 at him at something that's beyond a yes or no answer, and I
12 think that's very unfair.

13 THE COURT: Okay. First of all, he hasn't been
14 making speech making. The times that he has or that you have
15 I have stopped you. Do you have anything else to say?

16 MR. CARR: No, Your Honor.

17 THE COURT: I think what you've said is not borne
18 out by the record and totally none of it is based on the
19 record. That in fact is not what has happened. This witness
20 has been -- is on the precipice of contempt with one more
21 good one to push him over, because he has totally completely
22 after admonitions, explanations and requests blatantly
23 ignored the rules of this Court, rules that are general to
24 the Circuit Courts of the State of Illinois. That's why he

1 is in the trouble he's in. The attacks that have been made
2 on him in the court, not gentle to be sure, are proper, and I
3 don't think that some of the attacks that you made on Dr.
4 Carnow were any less gentle, and they were also proper. You
5 know, we're not, we're not playing kids' Tiddly-winks. This
6 could be a rough game, and you guys play rough every once in
7 a while, and when it's proper, I will let you play rough, and
8 this time it's proper just as it was with Dr. Carnow. Okay.
9 See you in the morning.

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

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

7 Dated this ____ day of February, 1986.
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1 STATE OF ILLINOIS)
2) SS.
3 COUNTY OF ST. CLAIR)
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5 I, Richard P. Goldenhersh, one of the Judges in and
6 for the Twentieth Judicial Circuit, do hereby certify that
7 the foregoing transcript is a true and correct transcript of
8 the proceedings had in said cause.

9 Dated this ____ day of February, 1986.

10
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12 _____
13 RICHARD P. GOLDENHERSH, JUDGE
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