

1 A. They did.

2 Q. Yes, Doctor. And the incident itself put the
3 contaminants over a large area of the plant. We went through
4 that already, didn't we, sir?

5 A. No, sir.

6 Q. Outside?

7 A. No, sir.

8 Q. You don't recall us going through the truck that
9 was contaminated and the child in the truck? Do you recall
10 that, sir?

11 A. Yes, sir.

12 Q. Now, Doctor, I take it that you disagree that more
13 than just a few buildings had exposure to TCDD at Nitro then,
14 is that correct?

15 A. I do indeed.

16 Q. And you don't consider anyone working in building
17 79 where they shipped it was exposed?

18 A. I don't know, sir.

19 Q. You don't know that?

20 A. No, I don't know.

21 Q. Doctor Roush has testified, sir, that in 79
22 everyone would be exposed to TCDD. Apparently he knows more
23 about it than you do?

24 A. No, sir.

1 MR. HEINEMAN: Objection. Can we have a citation?

2 MR. CARR: Of course not at this point, counsel.

3 MR. HEINEMAN: Why not?

4 THE COURT: Gentlemen. Go ahead, Mr. Carr.

5 Proceed.

6 Q. Doctor, if he so testified that one handling it in
7 building 79 would get exposure, that would mean that he would
8 know more about it than you because you know nothing about
9 building 79?

10 A. If he so testified, yes, sir. But I don't believe
11 that he knows more than I do because he wasn't there in '49
12 and '50 and he only arrived on the scene in 1976, sir, and he
13 knew very little until this trial probably about Nitro and
14 its problems because there was another medical director there
15 and there was a person assigned from his department to handle
16 matters of Nitro, West Virginia, not Doctor Roush. He had an
17 associate. So Doctor Roush, although corporate medical
18 director, didn't know very much about Nitro, West Virginia.

19 Q. Doctor, did Doctor Roush have access and does he
20 have access to all the plant records dealings with where
21 2,4,5-T was manufactured, where TCP was manufactured, where
22 it was hauled, where it was shipped from? Does he have
23 access to those records?

24 A. He might have access. As the medical director, he

1 would.

2 Q. You know that he does have access to them?

3 A. Whether he used them, I don't know.

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

6 THE COURT: Doctor --

7 A. Yes, he has access to them.

8 THE COURT: Doctor, you understand the last remark
9 you made was not responsive?

10 A. I am sorry.

11 Q. And, Doctor, one doesn't have to be present during
12 those years to be able to study the plant records and arrive
13 at a knowledge of where the 2,4,5-T was being handled and
14 where the contamination might have taken place, isn't that
15 correct, sir?

16 A. I don't know, sir.

17 Q. You don't know that, sir?

18 A. No, I don't know, sir.

19 Q. You don't know that one can learn from reading
20 records as to where 2,4,5-T was handled?

21 A. One might be able to.

22 Q. Doctor, did you go in and study the plant record
23 that Doctor Roush has studied as to where this business took
24 place, where it was manufactured, where it was shipped, where

1 it was hauled? Have you done that, sir?

2 MR. HEINEMAN: Objection, Your Honor. No evidence
3 to support that question.

4 THE COURT: Objection is overruled.

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

6 Q. Doctor, you can tell me whether you have or have
7 not studied the plant records as to where 2,4,5-T was
8 manufactured, where it was hauled to, where TCP was
9 manufactured, who came in contact with it under the
10 circumstances of shipping? Have you studied those plant
11 records, sir?

12 A. I have had access to those records, sir, with
13 respect to our studies.

14 Q. My question is, have you studied those plant
15 records, sir?

16 A. I can't say I studied all of them, sir.

17 Q. Doctor, did you look at any of the records
18 pertaining to building 79?

19 A. I really don't recall, sir.

20 Q. Doctor, you do understand that the subject of
21 contamination was important in the Nitro, West Virginia, case
22 at Charleston and you do know the EPA has investigated the
23 plant as far as contamination is concerned. Do you know that
24 Doctor Roush has had responsibility connected with finding

1 out where the contamination took place, where TCDD might be
2 present and where it might not be present? You know that,
3 don't you, sir?

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

5 Q. Doctor, would you assume then that those things are
6 true that I have given you, sir?

7 A. Assume that Doctor Roush was in charge? He wasn't.

8 Q. Doctor, I didn't say that, did I?

9 A. He wasn't in charge in that investigation.

10 Q. I said he had responsibility or that he had to
11 investigate these areas. That all these things took place.

12 A. I can't assume that because he didn't.

13 Q. Doctor, he has testified in this case that he did
14 investigate these matters, that he did have responsibilities
15 in this respect, that it was his obligation. He has
16 testified to these things under oath, sir, at some great
17 length.

18 MR. HEINEMAN: Objection, Your Honor. Could we
19 have a citation to that?

20 MR. CARR: Counsel, are you saying that it is not
21 true? That Doctor Roush did not say that?

22 MR. HEINEMAN: I don't think he did.

23 THE COURT: Wait a second, gentlemen. Approach the
24 bench for a minute.

1 (Bench conference had out of the hearing of the
2 jury.)

3 THE COURT: It is my recollection of Roush's
4 testimony that a number of times over that large period of
5 cross examination he did testify as to those things and that
6 what Mr. Carr stated was materially correct. Under the
7 circumstances unless you can show me something to the
8 contrary in the record that does not report with that, I am
9 going to allow you to carry on having that assumption.

10 MR. HEINEMAN: That is not my obligation, Your
11 Honor, it is Mr. Carr's obligation, just as the Court imposed
12 upon me when I was cross examining Doctor Carnow to point out
13 in the record where a statement was made. It is not my
14 obligation to do that, Your Honor, it is Mr. Carr's
15 obligation when he is going to say that a witness testified
16 to something.

17 THE COURT: I asked you in cross examination a
18 number of times where the evidence was if I didn't
19 remember or if I did not agree. Most of the time the
20 question was whether the document existed. This is not a
21 documentary question. It is a question of what happened
22 here. This is what I remember it to be too and I will check
23 my notes because I think my notes will bear that out and I
24 think that unless it is shown to the contrary to me, he has

1 fulfilled his obligation of being required as both of you are
2 to have citations made only on the basis of something in the
3 evidence in this case.

4 MR. CARR: Your Honor, I would like to point out
5 here that when the Court's recollection is the same as
6 counsel's recollection, that is who is posing the assumed
7 fact, it is not the Court's obligation to prove to the other
8 counsel that it was so. The Court's recollection, counsel
9 can't be quarreled with unless you have a cite to the
10 contrary.

11 MR. HEINEMAN: I am not asking the Court to prove
12 it to me. I am asking you to prove it to me.

13 MR. CARR: The Court is saying that I am not
14 obligated to prove it to you because the Court's recollection
15 is the same as mine.

16 THE COURT: I am satisfied that that that is what
17 happened. Therefore, as far as I am concerned, it has been
18 proved to me. If you want to pursue it further and show me
19 to the contrary, of course you may do so but my recollection
20 is the same as far as I am concerned.

21 MR. HEINEMAN: So my objection is overruled?

22 THE COURT: Your objection is absolutely
23 overruled.

24 (The following proceedings were had in the hearing

1 and presence of the jury).

2 (Court Reporter read back the last question.)

3 A. I am not sure what the question is, sir.

4 Q. Doctor, let me put it more clearly. Counsel, and
5 so that if you have Doctor Roush's testimony with you, it is
6 on July 10, 1985. Doctor, I would like you to assume that
7 Doctor Roush testified in this way on that time on page 122.
8 Now, Doctor, you know that these plants, the Nitro Plant and
9 all plants, they have a department that creates a chemical in
10 one place. You know that, don't you, sir? His answer was
11 yes. Question: You also know that workers are constrained or
12 required to go by a particular department or have to even go
13 through a particular department to get to his job, to his job
14 responsibility. His answer was yes, sir. Question: Even
15 hourly, I am sorry, even salaried employees do that, isn't
16 that right, sir? Answer: To some degree, yes. Question:
17 And, of course, there can be low dose continuous exposure to
18 dioxin in these workers at Nitro, West Virginia, who pass by
19 the place where the 2,4,5-T is being made, can't they, sir?
20 Answer: But it is not being made. Question: Who pass by it
21 when it was being made, sir? Answer: Yes. Question: And
22 they in passing by it can be exposed to low doses or
23 certainly lower doses than the people who are working with
24 it? Answer: Yes. Question: And, Doctor, you know that

1 occurs in every -- well, in at least the industry that you
2 are familiar with, there isn't any such thing as not being
3 exposed to the chemical being manufactured at the plant,
4 everybody there, even the people in the office are exposed to
5 some extent, aren't they, sir? Answer: Probably so.

6 Question: So when you say an unexposed group,
7 actually what you are saying is a group that is not exposed
8 as much as the people that work with it day in and day out.
9 That is actually what you are saying, isn't it, sir?

10 Answer: Yes.

11 Now, Doctor, I would like for you to assume that
12 Doctor Roush said those things under oath in this court.

13 MR. HEINEMAN: Excuse me, Your Honor. Could
14 counsel approach the bench?

15 THE COURT: Yes, you may.

16 (Bench conference had out of the hearing of the
17 jury.)

18 MR. HEINEMAN: The question wasn't at that time
19 that question. The question was whether Doctor Roush had
20 responsibility for overseeing the work that the EPA did in
21 doing the tests. That is what the question was.

22 MR. CARR: Mr. Heineman, do you want to tell me what
23 questions I have to ask this witness?

24 MR. HEINEMAN: You were coming back. We had an

1 objection. It was overruled. You came back and he said I am
2 not sure I understand the question and so --

3 MR. CARR: So I abandoned that and went to something
4 that I had material on and I will get the material.

5 MR. HEINEMAN: Are you representing --

6 THE COURT: Let me understand your objection here.
7 You are objecting to this question because it is not the same
8 as the one before?

9 MR. HEINEMAN: I am objecting to it because he is
10 pretending that this proves what he was saying before.

11 MR. CARR: No. The Court has already held that I
12 don't have to prove that.

13 THE COURT: No, he is not.

14 MR. CARR: And the Court has already said that I
15 don't have to do that, Mr. Heineman.

16 MR. HEINEMAN: The Court has overruled my
17 objection?

18 THE COURT: No. I think that you are
19 misinterpreting the question. Your objection is overruled.
20 Let's proceed.

21 (The following proceedings were had in the hearing
22 and presence of the jury).

23 Q. Doctor, I want you to assume that what I have read
24 to you is the truth. Could you do that, sir?

1 A. I am to assume that that is the truth?

2 Q. Yes.

3 A. Well, I have to assume it. I don't agree with it
4 but I have to assume it.

5 MR. CARR: Your Honor, would you direct the witness
6 to tell me that he doesn't agree or does agree. I am asking
7 him to assume something that is in evidence in this case.

8 THE COURT: Doctor, you weren't asked whether you
9 agreed or not. Again, please keep your responses only to the
10 question that is asked of you.

11 MR. HEINEMAN: Your Honor, may counsel approach the
12 bench?

13 THE COURT: Yes, you may.

14 (Bench conference had out of the hearing of the
15 jury.)

16 MR. HEINEMAN: I object to his asking this witness
17 to assume that that statement is true. He can assume that
18 that is what Doctor Roush said, all right, but he doesn't
19 have to assume that it is accurate.

20 MR. CARR: He most certainly does. If it is in
21 evidence. He is obligated to assume the facts are true that
22 are put in evidence. You have asked witnesses to assume the
23 facts of -- well, this is fact. It is in evidence.

24 THE COURT: There is nothing wrong with it. While

1 you are up here since it is about time for a break, I would
2 like you to talk to this witness again about his non
3 responsive answers since he has done this repeatedly this
4 morning, all day yesterday. You are talking to him but I
5 would like you to try again and it is about time for a
6 break. Is this a good point for you?

7 MR. CARR: Yes.

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

10 THE COURT: We will take a short break at this
11 time. I would remind you now as I do before any break to
12 cover the rest of the breaks of the day that you are not to
13 discuss this matter among yourselves, with anyone outside the
14 jury panel or as of yet form any opinions or conclusions
15 about the matters on trial. Court is in a short recess.

16 COURT RECESSED:

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

19 RAYMOND SUSKIND

20 having resumed the witness stand, being previously sworn,
21 testified further as follows:

22

23

24

1 CROSS EXAMINATION

2 By

3 MR. REX CARR.

4 Q. Doctor, in addition to the assumption that I asked
5 you to make that involved no such thing as being unexposed at
6 the Nitro Plant, I would like you also to assume that the
7 manufacturing process of the product that was involved from
8 beginning to end took place in buildings 32, 41, 34, 46, 21,
9 16, 79, 51 and 92. I would like you also to assume that
10 subsequent investigations found that as late as 1984 there
11 was a large area of the plant where there had been landfills
12 take place that was found to have TCDD contamination; that it
13 was decided to cover some of the area with crushed limestone,
14 to excavate some of the area, to pave other of the area and
15 that the contamination itself was found in a boundary area in
16 parts of the plant that would be -- well, all parts of the
17 plant with the exception of the western most section of the
18 plant as far as the buildings and land was concerned. Would
19 you assume that please, sir?

20 MR. HEINEMAN: Counsel approach the bench?

21 THE COURT: Sure.

22 (Bench conference had out of the hearing of the
23 jury.)

24 MR. HEINEMAN: First of all, with respect to

1 assuming the first part of the assumption, is that supposed
2 to relate to what Doctor Roush said? The first part of what
3 he asked?

4 THE COURT: About the list of buildings?

5 MR. HEINEMAN: No, before that.

6 THE COURT: I think that was the first thing he
7 said after we got over the break. The list of buildings was
8 the first thing he said.

9 MR. HEINEMAN: He said in addition to your
10 assumption.

11 MR. CARR: What Doctor Roush.

12 THE COURT: In addition to what Doctor Roush talked
13 about is what I understood it to be.

14 MR. HEINEMAN: He didn't mention Doctor Roush when
15 he said in addition to the assumption. So, I am objecting to
16 that because I don't know that it is clear that that is what
17 he is referring to.

18 Secondly, obviously if he is referring to Roush,
19 Doctor Roush gave an opinion. You can't ask this witness to
20 assume as a fact that an opinion was given by Doctor Roush.
21 Secondly, the building numbers that he read off are buildings
22 that overlapped one another from time to time and as I
23 understand it renamed. I don't think these are all different
24 numbers.

1 THE COURT: I am not sure I understand what you
2 mean.

3 MR. HEINEMAN: What I am saying, my understanding
4 that those are not all different buildings; that some of
5 those buildings have been renumbered.

6 THE COURT: I understand what you are saying.

7 MR. HEINEMAN: And the third part of it, at the end
8 he talked about the dioxin being found by the EPA in barriers
9 around all parts of the plant.

10 MR. CARR: I didn't say EPA.

11 THE COURT: I don't think --

12 MR. CARR: I said a subsequent investigation.

13 THE COURT: I think he said subsequent
14 investigation as late as 1984.

15 MR. HEINEMAN: He said all parts of the plant.
16 That is just not to --

17 THE COURT: Except for the western most section of
18 the plant, I think is what he said. That was the note I was
19 completing before you came up here.

20 MR. HEINEMAN: But he did say except for the
21 western most section, all parts of the plant and I object to
22 that as being inaccurate.

23 MR. CARR: I can probably state the question more
24 precisely than what I did, Your Honor, and I will be happy to

1 restate it, if it please counsel.

2 THE COURT: Okay.

3 (The following proceedings were had in the hearing
4 and presence of the jury).

5 Q. Doctor, before I restate the question for you
6 because of the lapse of time, have you been aware before
7 today, before I posed the question to you, that that number
8 of buildings had been involved with the production of this
9 material that is in question?

10 A. I had been aware that some of the buildings that
11 you mentioned and that I mentioned, sir, were the buildings
12 in which the 2,4,5-T process was conducted.

13 Q. Well, were you aware that it involved all of the
14 buildings that I have mentioned to you, sir?

15 A. I wasn't aware of it nor do I know that it is.

16 Q. Doctor, were you aware of the fact that wipe
17 samples in buildings 78 and 79 taken showed parts per
18 billion contamination in the wipe samples? Of course you
19 couldn't be aware of that. You said you didn't know anything
20 about building 79?

21 A. No, sir. I have read, sir, for the Charleston
22 trial, I have read the report of the combined EPA-Monsanto
23 sampling and analysis and I am aware of where the samples
24 were taken and I am aware of -- I don't recall what the

1 specific levels were but I am aware of the sampling and
2 analysis of the buildings as well as the soil areas and the
3 surface as well as up to 12 inches below the chat which is
4 the surface cover, sir.

5 Q. Doctor, perhaps you misunderstood my question.
6 Were you aware of the fact that it had been found by wipe
7 samples that building 78 and 79 were contaminated with TCDD?

8 A. I was aware that there were some samples taken and
9 that --

10 Q. Excuse me, Doctor. Were you aware of the fact as I
11 have said it to you, sir?

12 A. I was aware of the fact that samples were taken and
13 analyses were made.

14 Q. As I stated to you, sir --

15 A. Well --

16 Q. -- of building 78 and 79?

17 A. I don't recall 78 but I do recall 79 as --

18 Q. Doctor, if you do recall 79, before the break when
19 I mentioned the building 79 to you, you said you had never
20 heard of that before being involved?

21 A. As a place where they made 2,4,5-T, sir. That is
22 what I was referring to, sir.

23 Q. Doctor, you understand that people can be exposed
24 to the TCDD in places other than just where it is being made,

1 aren't you, sir?

2 A. They might, sir.

3 Q. When you consider whether or not -- when you gave
4 your answer earlier whether or not a person who was exposed
5 or unexposed, did you take into account building 79, sir?

6 A. I can't recall whether we did, sir.

7 Q. Did you take into account the large areas of the
8 plant where the TCDD was found in the soil, sir?

9 A. I don't believe that at the time that we did our
10 study there was samples taken of the soil, sir. You have
11 told me that samples were taken in 1984.

12 Q. Were you aware of the fact when you did your
13 studies, sir, did you take that into consideration when you
14 determined the exposures and the unexposures?

15 A. We couldn't. There were no samples taken, sir.

16 Q. That is the answer, sir, that you did not take it
17 into consideration?

18 A. We couldn't. It wasn't done, sir.

19 Q. Is the answer, then, that you did not take it into
20 consideration?

21 A. We couldn't have, sir.

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

24 THE COURT: Doctor, please answer the question as

1 it is posed to you.

2 MR. HEINEMAN: Your Honor, may I object. I believe
3 the answer is responsive.

4 THE COURT: Objection is overruled. It is not
5 responsive?

6 A. Would you state the question please?

7 (Court Reporter read back the last question.)

8 A. I cannot answer that question in the way it is
9 phrased, sir.

10 Q. Doctor, when you determined the exposed and the
11 unexposed group, did you take into consideration the fact
12 that building 78 and 79 was contaminated with TCDD and that
13 there were large areas of the plant, the soil in the plant
14 was found to be contaminated with TCDD?

15 A. No, we did not, sir.

16 Q. All right, Doctor. Now, if you did not take that
17 into consideration then, sir, you have no real knowledge as
18 to whether or not your so-called unexposed group were or were
19 not exposed to TCDD in these other areas, isn't that correct,
20 sir?

21 A. Would you read the question back?

22 (Court Reporter read back the last question.)

23 A. Yes, we do have knowledge about their exposure or
24 non exposure, sir.

1 Q. Doctor, you told us that you didn't have knowledge
2 that these areas were contaminated, isn't that correct, sir?

3 A. We didn't have that knowledge at the time, sir.

4 Q. And, Doctor, you didn't take that fact into
5 consideration, then, when you determined whether or not a
6 person was exposed, did you, sir?

7 A. No, we did not. I have already answered that
8 question, sir.

9 Q. If you don't know the fact, you can't take it into
10 consideration, can you, sir? If you don't know the facts,
11 you can't use those in arriving at a determination of
12 exposure, can you, sir?

13 A. If those are the facts, sir, yes.

14 Q. Is that a yes to my question, that you cannot use
15 these facts if they are unknown to you?

16 A. Correct.

17 Q. Then, Doctor, if a person was in or worked in or
18 walked through or was in these areas that were subsequently
19 found to be contaminated, you could not take that fact into
20 consideration in determining whether or not a given subject
21 was or was not exposed, isn't that correct, sir?

22 A. We did not have that -- would you read the question
23 again? It is a complicated question and I want to hear it
24 accurately, sir.

1 (Court Reporter read back the last question.)

2 A. Yes, we could, sir.

3 Q. Doctor, are you assuming that you didn't know these
4 areas were contaminated as you have said that you didn't know
5 it?

6 A. We didn't have that information, yes, sir.

7 Q. Are you assuming that, sir?

8 A. I am assuming it.

9 Q. And, Doctor, if you didn't know those areas were
10 contaminated, you couldn't very well take that fact into
11 consideration when you determined whether or not a subject
12 who may be in that area was or was not exposed, isn't that
13 correct?

14 A. Yes, sir, we could, sir.

15 Q. Doctor, if a subject worked in building 79 and you
16 didn't know at the time you did your study that it was
17 contaminated, how would you list that person? Exposed or
18 unexposed?

19 A. It would depend upon what this person did in '79.

20 Q. Could you answer my question, sir? If he works in
21 building 79 and you do not know, sir, that it is contaminated
22 with TCDD, would you list that person as exposed or
23 unexposed?

24 A. I would list him as unexposed accurately, sir.

1 Q. And, Doctor, the person, however, that worked in
2 that building 79 would be considered by you in your morbidity
3 study and would be placed by you in the unexposed group,
4 would he not, sir?

5 A. He would, sir, and accurately.

6 MR. CARR: Your Honor, would you direct the jury to
7 disregard the last statement of the witness?

8 THE COURT: The jury is so directed. It is not
9 responsive to the question. You are ordered to disregard
10 the last statement made.

11 MR. CARR: And would the latter part of that
12 statement be stricken from the record so that his answer may
13 stand as a yes to my question without qualification, sir?

14 THE COURT: It is so stricken. It is not
15 responsive.

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

18 THE COURT: Yes, you may.

19 (Bench conference had out of the hearing of the
20 jury.)

21 MR. HEINEMAN: I object to the Court striking the
22 portion of the answer as given from the record so that the
23 record would appear that the answer was wholly yes. I don't
24 think that is a proper thing for the Court to do and I object

1 to it. The man may give an answer he thinks is responsive
2 which this court can, counsel may disagree with but he is
3 entitled to give that answer if he believes it is
4 responsive. And it should not be stricken from the record
5 and I object to it.

6 MR. CARR: It is the Court's obligation to strike
7 things from the record that are not appropriate responses to
8 questions. Nobody asked this man whether it was or was not
9 accurate. It is subsequently the problem. The question was
10 clear and the answer did not take that into consideration and
11 that is the answer. Otherwise I will have to ask the
12 question again and the Court will require him to answer that
13 question without the words "and accurately" stated thereto.
14 Now, that is what I have to go through and ask the Court
15 Reporter to read that question to him and ask him and have
16 the Court sit on him and ask him to answer just that question
17 and don't add another word to it or him being held in
18 contempt of court. Which do you prefer, counsel?

19 MR. HEINEMAN: My objection stands.

20 THE COURT: You are telling me that in your opinion
21 his added words "and accurately" was responsive to that
22 question?

23 MR. HEINEMAN: No, sir. I am not saying that it
24 was in my opinion, Your Honor. It may have been in his

1 opinion. That is what I am saying. He may have thought it
2 was.

3 THE COURT: And you think that he honestly would
4 believe that that is responsive to the question in his
5 opinion after I have directed him as to the answers to be
6 responsive and after you have talked to him a number of times
7 including over this break at my request about responsive and
8 not responsive answers? Do you honestly believe that he
9 would think in his own mind that that is responsive to the
10 question?

11 MR. HEINEMAN: He might. I haven't talked to him,
12 Judge. I don't know whether he did or not but what I am
13 saying is, he might think it is responsive.

14 THE COURT: That is absurd. Your objection is
15 overruled. There is no way if you know the English language
16 as an M.D. would know it as he has demonstrated in the record
17 that he knows it that why he would consider that last comment
18 was responsive to the question and it was no way involved in
19 that question. It was not in any way proper and part in the
20 response to the question. The objection is overruled.

21 MR. CARR: I do want it clear for the record.
22 Simply I want it to be a fact and I don't want any question
23 about the Court making the fact so I would like to have the
24 Reporter read that same question to him again and have him

1 respond just to the question and you direct him to respond
2 just to the question so that I can get his response in the
3 record to that question clearly and without any
4 qualification.

5 MR. HEINEMAN: Wait a minute. You mean you are
6 going to ask him another question?

7 MR. CARR: No. I am going to ask the Court Reporter
8 to read that question to him and have him answer it again.

9 MR. HEINEMAN: Wait a minute. The Court has
10 instructed the jury to disregard it. The Court has stricken
11 it.

12 MR. CARR: Yes. But you made an objection.

13 MR. HEINEMAN: Of course I have. That is for the
14 record.

15 MR. CARR: So I will make it clear that is the
16 witness's answer without any modification by the court so I
17 am going to ask to have the question read again and --

18 THE COURT: I don't think I am clear on what you
19 are driving at.

20 MR. CARR: I don't want to have to rely upon your
21 striking the latter part of the answer if I subsequently read
22 this back to him in some point in time because it will appear
23 in the record. While you say it is stricken, it in fact
24 isn't stricken.

1 THE COURT: It is not physically stricken.

2 MR. CARR: It is still there. If you want to refer
3 to this answer some point in time, I will have to take with
4 it the qualification that the Court struck it in order to
5 make it a proper response. I want to ask the question again
6 and get the proper response in the record so that I can read
7 that to him at some point in time.

8 THE COURT: What you are saying you want the
9 question and the answer read back and verify that that --

10 MR. CARR: Just the question and have him answer
11 that question again without --

12 MR. HEINEMAN: Well, Your Honor, I would object to
13 that procedure on the basis that he has asked the question,
14 he has gotten his answer, you have stricken the portion in
15 which the Court believes is unresponsive and have told the
16 jury to disregard that. That is the way it stands.

17 MR. CARR: And you are objecting to the Court's
18 doing it.

19 MR. HEINEMAN: I am doing that for the record.

20 MR. CARR: I am doing this for the record, counsel.

21 MR. HEINEMAN: You are doing this so you will have
22 some other --

23 MR. CARR: You are playing a game, counsel, and I
24 want to thwart you in your game. You are playing this game

1 saying the Court doesn't have the power to do that and
2 shouldn't do it. I am assuming for the purposes of this
3 record that maybe you are right. I don't want a possibility
4 of any error here so I am going to ask -- have the question
5 read again and get a new answer for it so the Court won't
6 have to strike parts of it.

7 MR. HEINEMAN: Your Honor, I still believe that the
8 question has been asked, the answer has been given, the Court
9 has ruled on the question and the answer and that is the end
10 of it.

11 MR. CARR: Are you withdrawing your objection to the
12 Court's ruling?

13 MR. HEINEMAN: Of course not.

14 MR. CARR: Then I want to go ahead and have the
15 question asked again so that some day on appeal you cannot
16 argue to the Appellate Court that the Court could not strike
17 that part of the answer. I want to ask the witness to
18 respond just to that question and with the Court's framework
19 be the Court's order so there won't be any question about why
20 the answer to my question is yes period.

21 MR. HEINEMAN: But that isn't what happened.

22 MR. CARR: It is what is going to happen in a
23 moment, if the witness is truthful and can obey.

24 THE COURT: Could you read back what?

1 MR. CARR: The answer was yes, and accurately.

2 THE COURT: I will allow you to do it.

3 (The following proceedings were had in the hearing
4 and presence of the jury).

5 MR. CARR: Doctor, I am going to have the Court
6 Reporter read that question to you again and do you
7 understand that you are to respond to that question?

8 A. Yes, sir.

9 Q. And not add something to the response. Could you
10 read it to him again.

11 COURT REPORTER: "And, Doctor, the person, however,
12 that worked in that building 79 would be considered by you in
13 your morbidity study and would be placed by you in the
14 unexposed group, would he not, sir"?

15 A. Yes, he would, sir.

16 Q. Thank you, Doctor. Now, Doctor, that opens up the
17 possibility, while you may not agree that it occurred, that
18 opens up the possibility that some of your unexposed group
19 that you have classified as unexposed may have been in fact
20 exposed to TCDD, isn't that correct, sir?

21 A. No, sir.

22 Q. Doctor, if the workers worked in the area that was
23 contaminated with TCDD, they are possibly exposed to the
24 TCDD, are they not, sir?

1 A. Not necessarily, sir.

2 Q. I know that, Doctor, but I said possibly exposed to
3 TCDD, aren't they, sir?

4 A. It depends where.

5 Q. Doctor, are you assuming they are working in the
6 building where the TCDD contamination was found on the walls,
7 on the floor?

8 A. I am.

9 Q. In the corners?

10 A. I am, but it depends upon where the TCDD was
11 found. If it was found in the rafters or on the roof.

12 Q. Found on the walls, on the floor, in the ducts, in
13 the building. Are you assuming that, Doctor?

14 MR. HEINEMAN: Objection. May counsel approach the
15 bench?

16 THE COURT: Yes, you may.

17 (Bench conference had out of the hearing of the
18 jury.)

19 MR. HEINEMAN: Your Honor, I don't believe that
20 that is the evidence that is found all over the place.

21 MR. CARR: I have the evidence.

22 MR. HEINEMAN: Well, use it.

23 MR. CARR: This is building 79, Your Honor, and the
24 TCDD was found at the base of the stairs, TCDD was found in

1 the northwest corner in the drain, on the eye beam, in the
2 mid south door and the screen, on the dry end door, on the
3 entrance to a door H, on the end bagger, found at another
4 base of stairs all by Exhibit 1528 that is in evidence.

5 MR. HEINEMAN: Was 1528 only building 79?

6 MR. CARR: That is right.

7 THE COURT: Okay. You may proceed. The objection
8 is overruled.

9 MR. HEINEMAN: Upon that basis, you are saying that
10 he can say it is all over building 79?

11 THE COURT: He has specified. He gave a whole
12 list. Objection is overruled.

13 MR. HEINEMAN: He didn't give that list to the
14 witness, Your Honor.

15 THE COURT: He most certainly did. He listed a
16 number of places where he was to assume that it was found.
17 He listed it twice. Your objection is overruled. Let's
18 proceed. I want to finish this question up before
19 lunchtime.

20 MR. HEINEMAN: Your Honor, for the record, I object
21 on the basis that the list he gave the witness is not the
22 list that he gave the Court.

23 THE COURT: Objection is overruled. It was
24 included in that.

1 (The following proceedings were had in the hearing
2 and presence of the jury).

3 Q. Doctor, with regard to building 79 in the sweepings
4 thereof, they found the TCDD in all places swept with the
5 exception of four places, four samples. Will you assume
6 that, please, sir?

7 A. May I ask what were the places, sir?

8 THE COURT: Doctor, just respond to the question,
9 please. Doctor, just respond to the question that was asked.

10 MR. CARR: I will give him the places.

11 Q. The dry end door, the end door, the Velcro screen,
12 the two level screen, the mid south door, the eye beam, the E
13 drain, the northwest corner, the dry valve, the end bagger,
14 the base of the stairs. Now, Doctor --

15 A. May I ask another question?

16 Q. Doctor, let me pass on that please, sir.

17 A. Thank you.

18 Q. Now, Doctor, a worker in that building where they
19 found the TCDD in those sweepings, sir, from the floor, sir,
20 would be exposed to that TCDD, would he not, sir?

21 A. Not necessarily, no, sir.

22 Q. Could he be exposed to TCDD if he is working in a
23 building where it is found in all but four places tested?

24 A. He might, sir.

1 Q. Yes, he might indeed, mightn't he, sir?

2 A. He might.

3 Q. And he might, therefore, be exposed to TCDD?

4 A. No, sir, not significantly.

5 Q. You added a word.

6 A. I did, sir, and I think that is important.

7 Q. Doctor, I am asking you, he would be exposed to

8 TCDD, wouldn't he, sir?

9 A. No.

10 Q. Doctor, is he working in the building?

11 A. Yes.

12 Q. Are you assuming that, sir?

13 A. Yes.

14 Q. Are you assuming that the dust in the building has

15 TCDD in it as shown by this Exhibit?

16 A. Yes. I would have to ask how much.

17 Q. Doctor, but I am not asking you how much. I am not

18 suggesting how much. You are exposed to TCDD --

19 A. My answer would depend on that.

20 Q. I want you to assume the TCDD if it is there

21 whether it is a million parts per million or one part per

22 million or one part per billion or one part per trillion,

23 sir. There is an exposure to TCDD, is there not, sir?

24 A. There might be, sir.

1 Q. If he is working in the building that has TCDD in
2 the dust, sir, in that building, all over that building, he
3 is working in TCDD, is he not, sir?

4 A. He might, sir.

5 Q. Doctor, is he or is he not?

6 A. I said he might, sir.

7 Q. Doctor, it is more than might. You know that he
8 is. If I am walking on this floor, sir, that has dust on it,
9 if I touch this wall, sir, if I sit in that chair, if I walk
10 up those stairs that has TCDD in it in the dust, sir, I stir
11 dust when I move, don't I, sir?

12 A. You might.

13 Q. And the person that comes behind me is exposed to
14 that dust that is stirred, isn't it, sir?

15 A. Might.

16 Q. And that person behind me could inhale and would
17 inhale that dust, wouldn't he, sir? Not might but would?

18 A. He might, sir.

19 Q. Oh, Doctor, there is no question about it. If he
20 is inhaling, the dust is in the air, isn't it, sir?

21 A. There is a question in my mind. It all depends on
22 the circumstances, sir.

23 Q. I have given you the circumstances. The dust is in
24 the air, isn't it, sir?

1 A. Correct. You are asking me to assume that.

2 Q. One breathes in the air, does he not, sir?

3 A. Yes.

4 Q. And if the dust is in the air, one is breathing in

5 that dust, isn't he, sir?

6 A. If there is dust in the air at the time he is

7 breathing it, sir.

8 Q. Doctor, you know that person walking down this

9 floor -- when I walk down that floor, if there was dust on

10 that floor, I caused just by my motion some of that dust to

11 come into the air, didn't I, sir?

12 A. You could.

13 Q. I did, not could. You know I did, don't you, sir?

14 A. I say you could.

15 Q. But, Doctor, you know that I did. If there is dust

16 on this board, all I do is wipe my hands ^ offer ^ over it.

17 Don't touch it. I will cause some of that dust to come in

18 the air, wouldn't I, sir?

19 A. You could. Sure.

20 Q. Doctor, not could but would. Isn't that correct,

21 sir?

22 A. It might be correct, sir.

23 Q. I am not asking you might it be correct. I am

24 asking you, it is correct, isn't it, sir?

1 A. It also might fall on the floor, sir.

2 Q. It eventually --

3 A. It wouldn't get in the air.

4 Q. You are going a step further. I am asking you

5 first --

6 A. I am sorry if I am ahead of you.

7 Q. I am asking you first to agree that a person

8 walking through a room that has dust on the floor would stir

9 up the dust into the air when he walks along?

10 A. He might depending upon the density of the dust,

11 sir.

12 Q. Doctor, it doesn't take dense dust to stir it up.

13 It only takes -- It is dense to see it. But it is stirred up

14 whether it is dense or not, isn't it, sir?

15 A. It might be stirred up but it might not get into

16 the air.

17 Q. You are going a little bit further, aren't you,

18 sir?

19 A. I am answering your question accurately as a

20 scientist would, sir.

21 Q. I understand that. Doctor, my question is, as a

22 scientist, you know that walking through a room that has dust

23 on the floor, the movement of the foot on the dust, the

24 movement of the foot in the air will cause that dust to stir

1 up. You know that, don't you, sir?

2 A. I have to stick by my answer. It might do that,
3 sir, depending upon the density of the sediment.

4 Q. Doctor, it doesn't depend on the density of the
5 sediment. If there is any dust there at all it is going to be
6 stirred up, isn't it, sir?

7 A. It all depends upon the density.

8 Q. The density depends upon how much is going to be
9 stirred up. One little dot of dust will be stirred up and it
10 is not dense, isn't that correct, sir?

11 A. Perhaps we are not communicating. When I mean by
12 dense is the weight of the particle, sir, and the weight of
13 the particle may be such that it doesn't get into the air.
14 That is what I am saying. That is why -- I am not talking
15 about the aggregate density of the dust. I am talking about
16 the weight of the particle of dust, sir. The size of the
17 particle of dust.

18 Q. All right, Doctor. Do you know that these were
19 wipe samples that were taken?

20 A. Yes, I believe they were.

21 Q. And you know they were very, very small particles,
22 don't you, sir?

23 A. I can't say because --

24 Q. You don't know that, sir?

1 A. I don't know the size of the particle.

2 Q. Doctor, back to the point in question. One walks

3 through a room, one stirs up dust if it is present, doesn't

4 he, sir?

5 A. Again, it might stir it up.

6 Q. Doctor, if the man takes off his shoes, he touches

7 some of the dust, doesn't he, sir?

8 A. He could, yes.

9 Q. If he breathes near his shoes, he is breathing some

10 of the dust, isn't he, sir?

11 A. If he breathes near his shoes, yes.

12 Q. And, Doctor, if the dust was in the air, for it to

13 get on the floor, it first had to be in the air, didn't it,

14 sir?

15 A. It might. Depending upon where the dust, where

16 this dust came from.

17 Q. On the floor, Doctor. If it is on the floor it

18 first had to be in the air in some way or another; because it

19 is at the base of the stairs, it first had to be in the air,

20 didn't it, sir?

21 A. It might get there by people walking from other

22 areas and trampling it in, sir.

23 Q. Yes, indeed.

24 A. I am thinking of all the possibilities.

1 Q. And that certainly is a way of contamination, isn't
2 it, sir?

3 A. Sure.

4 Q. For a truck to drive through a contaminated area
5 and drive into another area, it would bring that
6 contamination, wouldn't it, sir?

7 A. It would bring some in, yes.

8 Q. Workers working in one area would get it on their
9 clothes and when they walked to town or walked to the
10 restaurant or walked to a church, they would bring that
11 contamination with them, wouldn't they, sir?

12 A. They could, yes.

13 Q. And some of that dirt and dust would fall off of
14 them, in the church, in the store, in the hardware store,
15 couldn't it?

16 A. It could.

17 Q. And, Doctor, that is the way contamination is
18 spread, isn't it, sir?

19 A. Not necessarily, sir.

20 Q. Doctor, I know it is not necessarily but that is
21 the way contamination is spread, one of the ways, isn't it,
22 sir?

23 A. It might be, sir.

24 Q. Yes, Doctor. And if the workers that work in

1 building 41, if they had occasion to go to a common lunch
2 room, they would carry that, some of that dust with them,
3 wouldn't they, sir?

4 A. I don't know.

5 MR. HEINEMAN: Objection, Your Honor. Lack of
6 evidence.

7 A. I really don't know because I have not seen that
8 and you haven't either.

9 THE COURT: Objection is overruled.

10 Q. Doctor, I am asking you based upon your knowledge
11 as a responsible, long-lived human being that you know if a
12 worker works in an area that has contamination in it, if this
13 contamination gets on him he is going to carry it with him
14 wherever he might go with his body, if it is on his body,
15 with his clothes, if it is it is on his clothes?

16 A. Hypothetically, that is true, sir.

17 Q. And from place to place, that contaminated material
18 will fall off, wouldn't it, sir?

19 A. It might, sir.

20 Q. It will fall off at home, wouldn't it, sir?

21 A. It might.

22 Q. If you wear those clothes home? Your children
23 could come in contact with it?

24 A. It might, sir.

1 Q. -It could, couldn't it?

2 A. It possibly could.

3 Q. Yes, Doctor. And if he goes into the restaurant,

4 the other people that go into that restaurant would be

5 exposed to it as well, wouldn't they, sir?

6 A. Not necessarily, sir.

7 Q. Doctor, I know it is not necessarily but they well

8 indeed could?

9 A. This is all speculation, sir.

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

11 to not argue with me and to just answer my question?

12 MR. HEINEMAN: Objection, Your Honor. The

13 questions are argumentative.

14 THE COURT: The objection is overruled. They are

15 not. Answer the question, please, Doctor.

16 A. Would you state the question for me, please?

17 COURT REPORTER: "Yes, Doctor. And if he goes into

18 the restaurant, the other people that go into that restaurant

19 would be exposed to it as well, wouldn't they, sir? Answer:

20 Not necessarily, sir. Question: Doctor, I know it is not

21 necessarily but they well indeed could? Answer: This is all

22 speculation, sir."

23 A. I would have to answer that no, sir.

24 Q. They couldn't be, sir?

1 A. No.

2 Q. Do you agree that the dust that is on their
3 clothing or the material that is on their clothing might well
4 and could fall off in the restaurant?

5 A. It could fall off in the restaurant.

6 Q. And do you agree that some other person might sit
7 in that same chair where some of this material might have
8 fallen?

9 A. They might.

10 Q. And do you agree that that person might thereby
11 come in contact with some of this material that fell?

12 A. No, I wouldn't agree, sir.

13 Q. Doctor, if it is there, if he touches the chair, if
14 the material is on the chair or if it is in the form of dust
15 and he blows or breathes up or whatever happens, he might
16 well come in contact with it, might he not, sir?

17 A. No.

18 Q. Doctor, if it is there and he touches it, isn't he
19 in contact with it?

20 A. If he touches it?

21 Q. He is going to touch the chair, isn't he, sir?

22 A. Yes.

23 Q. And the chair has got the contaminated material on
24 it, has it not, sir?

1 A. Yes.

2 Q. And if he touches that, he is going to be in
3 contact with that contaminated material, isn't he, sir?

4 A. Yes, he might.

5 Q. Yes.

6 THE COURT: Mr. Carr, is this a good point to
7 break?

8 MR. CARR: Yes, Your Honor.

9 THE COURT: We will take a break for lunch at this
10 time. We will resume again at 1:15. The admonishments that
11 I gave you earlier will apply during this break also. Court
12 is in recess.

13 COURT RECESSED:

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

16 RAYMOND SUSKIND

17 having resumed the witness stand, being previously sworn,
18 testified further as follows:

19 CROSS EXAMINATION

20 By

21 MR. REX CARR.

22 Q. Doctor Suskind, in addition to the other testimony
23 that I read to you relating to Doctor Roush, I would like you
24 to assume that he also testified on July 26, 1985, on page

1 155, counsel, with reference to building 79 which we
2 discussed this morning. That he said that the people who
3 were working in that building up to September of 1984 were
4 exposed to dioxin. Will you assume that also, sir?

5 A. You are asking me to assume it, I will assume it.

6 Q. Assume that that is what he testified to, sir, and
7 that is a fact, will you do that?

8 A. Yes.

9 MR. HEINEMAN: Your Honor, may counsel approach the
10 bench?

11 THE COURT: Sure.

12 (Bench conference had out of the hearing of the
13 jury.)

14 THE COURT: What building was that? I missed it.

15 MR. CARR: 79.

16 MR. HEINEMAN: Your Honor, my objection relates to
17 the fact that the question, he didn't say it was there until
18 1984. That isn't what Roush said. The question is whether
19 or not at the time it was there, Doctor, people working in
20 that building up to September of 1984 at least were exposed
21 to the dioxin there, weren't they? Answer: Yes. I object
22 to the form of the question as not appropriately stating what
23 Doctor Roush testified to.

24 Further, I would object to that as an opinion of

1 Doctor Roush and, therefore, obviously nothing became of
2 Doctor Roush's personal knowledge. He is asking him an
3 opinion and that it is not appropriate to ask a witness to
4 assume as true another witness's opinion as though it were a
5 fact and, therefore, I object to it on that ground as well.

6 THE COURT: Do you have anything?

7 MR. CARR: It is a fact, Your Honor. It is stated
8 as a fact and my question that counsel hasn't stated for the
9 record that the question preceding that was in fact these
10 sweepings were taken in 1984 and that I asked him also
11 whoever was in those buildings from the time they started
12 using them in 1984 or up until 1984 were exposed to dioxin
13 were they not and counsel objected at that time. He said
14 isn't that correct, Doctor? I am not sure how long it was
15 there and I said whatever time it was and the people working
16 in that building up to 1984 at least were exposed to dioxin,
17 weren't they? Yes, sir. He doesn't say that is his
18 opinion. He says yes, sir, that is the fact.

19 THE COURT: Your objection is overruled.

20 (The following proceedings were had in the hearing
21 and presence of the jury).

22 THE COURT: Gentlemen.

23 (Bench conference had out of the hearing of the jury
24 and off the record.)

1 (The following proceedings were had in the hearing
2 and presence of the jury).

3 Q. Now, will you assume that also, Doctor, as I have
4 asked you to do?

5 A. Could you read the assumption back, please?

6 (Court Reporter read back last two questions.)

7 A. I will assume that.

8 Q. Also assume, please, that on the 29th of July,
9 1985, he also testified that it was, that if the building as
10 the exhibits indicate, that 2,3,7,8 was in the building in a
11 dusty condition and that they had to use vacuum sweepers to
12 remove the dust and we found it in the parking area, that it
13 was reason to assume that the people that used the parking
14 lot have some exposure to TCDD in those areas. Would you
15 also assume that he testified to that?

16 A. I will assume that.

17 MR. HEINEMAN: Page number, please.

18 MR. CARR: 15, counsel.

19 Q. Also assume that on page 20 he testified that they
20 have all used the parking lot, they have all been exposed to
21 the fumes and the incineration and the dust and the area that
22 is paved and that they found 2,3,7,8 TCDD contamination on
23 three sides of this four sided plant lot. Also assume that
24 he had stated that the workers in that area nearly surrounded

1 by areas of 2,3,7,8 TCDD contamination and they have been
2 there for 20 or 30 years since 1949 or thereabouts, '48, '46,
3 up until 1985, 38 years. Will you assume that as well, sir?

4 A. If you are asking me to assume it, I will assume
5 it, sir.

6 Q. That is what I am asking you to assume, that Doctor
7 Roush testified to these factual matters.

8 A. Uh-huh.

9 Q. Doctor, I would like you also to assume that there
10 is in evidence a number of exhibits showing the extent of the
11 TCDD contamination in the Nitro Plant including B 32, B 41, B
12 34, B 46, B 21, B 16, B 79 as well and B 51 and 92 as you
13 have previously described, and that there is in evidence a
14 plat marked Plaintiffs' Exhibit 1527A which shows the parking
15 lot area and shows the other areas that we are going to have
16 to be paved, concrete put over them, asphalt and things of
17 that sort to avoid further exposure. Will you assume all of
18 those things?

19 A. I will assume it if you will let me see the plat,
20 sir.

21 Q. Doctor, I am not obligated to let you see it. The
22 Court has seen them. The jury has seen them and I don't need
23 to reprove the case with you each time. That is the reason
24 for asking you to assume it, Doctor.

1 A. Okay. I will assume it, sir.

2 Q. Thank you. Doctor, under those circumstances, do

3 you agree with Doctor Roush that all of the plant workers

4 have been exposed to TCDD at some level?

5 A. No, sir.

6 Q. Doctor, I take it then that you disagree with

7 Doctor Roush that they have been exposed to TCDD at some

8 level?

9 A. I would disagree with him, yes, sir.

10 Q. Do you have any facts relating to the extent of the

11 contamination of the Nitro Plant that contradict these

12 documents and facts that I have read to you to assume,

13 Doctor?

14 A. There were some areas of the plant that were --

15 Q. Doctor, my question is --

16 A. Yes, may I answer it? There were some areas of the

17 plant, having read the sampling and analysis documents

18 produced by Monsanto and the EPA, there were some areas of

19 the plant in which no TCDD was found and there was some areas

20 where the level of TCDD was so small in the parts per

21 trillion.

22 MR. CARR: Your Honor, would you instruct the

23 witness to stop talking when I am interposing another

24 question?

1 MR. HEINEMAN: Objection. He interrupted him in
2 the middle of an explanatory answer that he elicited.

3 MR. CARR: Which I have the right to do when a
4 witness is going on with matters that are not responsive to
5 the question that I have asked him.

6 MR. HEINEMAN: It is directly responsive.

7 THE COURT: Mr. Carr, you may continue.

8 Q. Doctor Suskind, I didn't ask you whether or not
9 there were areas that were not contaminated. I didn't ask
10 you to assume that the entire plant was contaminated, that
11 all the soil in the plant was tested and found TCDD. I
12 didn't ask you to assume a great level or a low level. You
13 understand that, Doctor?

14 A. I believe I do, sir.

15 Q. All right. Now, Doctor, without regard to whether
16 or not there were some areas that weren't contaminated and
17 without regard to the extent or the concentration of the
18 contamination, do you agree with Doctor Roush that these
19 workers were, therefore, exposed to TCDD at some level?

20 A. No, sir.

21 Q. Do you have any documents, sir, upon which to base
22 a conclusion that these workers were not exposed to TCDD at
23 some level?

24 A. The document that I attempted to describe, sir.

1 Q. Doctor, the document you attempted to describe
2 states in effect that some samples that were taken at Nitro
3 didn't have TCDD in the soil, isn't that correct, sir?

4 A. Many samples, sir.

5 Q. Many samples?

6 A. Many samples.

7 Q. Whatever, sir. Whatever, many or some. You do
8 understand my question, sir? You know it for a fact that
9 three of the four sides of this plant had contaminated areas,
10 soil contaminated areas with TCDD, did you not, sir?

11 A. I am not sure I recall that aspect of it.

12 Q. Doctor, I have asked you to assume that as a fact.
13 This is proven in this case and now you apparently are
14 requiring me to prove it over again, sir. Are you assuming,
15 sir, that the contamination is as I have described to you,
16 that the evidence in this case, the uncontradicted evidence
17 in this case is as I have stated to you, sir?

18 MR. HEINEMAN: Objection, Your Honor. He asked him
19 if he knew it and that is what the witness was responding to.

20 THE COURT: Objection is overruled.

21 A. If you are asking me did I know it?

22 Q. No, Doctor, I didn't ask you that and I know I
23 didn't ask you that.

24 A. That is what I am hearing.

1 Q. That is what Mr. Heineman says but I didn't ask you
2 that.

3 A. What did you ask me?

4 Q. What I have asked you to assume that these things
5 are facts. Not that you know them as facts but that they are
6 in evidence, uncontradicted evidence, in this case. Assume
7 that these things are facts, that they are true, sir. Will
8 you do that, sir?

9 A. I am assuming that at your request, sir. Yes.

10 Q. Now, Doctor, assuming those things to be true, do
11 you have any knowledge of any facts to support a conclusion
12 that the workers were not exposed, the workers in this plant
13 were not exposed to TCDD at some level?

14 A. Only that which I have already quoted, sir.

15 Q. Doctor, the fact that there might have been some
16 areas of the plant that weren't contaminated doesn't mean
17 that the workers weren't exposed to the TCDD in the areas
18 that were contaminated. Three of the four sides, three of
19 the four areas of the plant were contaminated, isn't that
20 correct, sir?

21 A. It might be that these workers or employees or
22 whoever they were were not exposed to those areas, sir.

23 Q. Doctor, do you have any knowledge that they weren't
24 exposed to these contaminated areas?

1 A. No, - I only have what you have told me.

2 Q. What I am asking you, do you have any knowledge,
3 sir, that these workers weren't exposed to this
4 contamination?

5 A. I only have your report, sir.

6 Q. Doctor Roush has testified that all of the workers
7 in that plant were exposed to TCDD at some level. Now, you
8 have said you don't agree with that but Doctor Roush said --

9 MR. HEINEMAN: Objection, Your Honor. May counsel
10 approach the bench?

11 THE COURT: Yes, you may.

12 (Bench conference had out of the hearing of the
13 jury.)

14 MR. HEINEMAN: I have here Doctor Roush's
15 testimony, it is the 29th -- excuse me. Your Honor, what
16 Doctor Roush has testified to, what Mr. Carr showed him
17 before is what Doctor Roush -- was a portion of one portion
18 of Doctor Roush's testimony. What he failed to point out to
19 the court was that in another question of Doctor Roush's
20 testimony, Doctor Roush said, "And, Doctor, didn't you last
21 agree when I asked you about it, didn't you say that all the
22 workers in that plant were exposed to 2,3,7,8 TCDD to some
23 extent? Answer: Theoretically." Theoretically, just what I
24 pointed out to the court before.

1 MR. CARR: But he didn't say theoretically,
2 counsel. In fact he said theoretically when you asked him
3 about it. This is your questioning but he originally said
4 yes to that question.

5 MR. HEINEMAN: You see, Mr. Carr, you have objected
6 on occasion when all of the record isn't used and brought to
7 the witness's attention and that is what I am objecting to.

8 MR. CARR: Counsel, that is an entirely different
9 matter.

10 MR. HEINEMAN: I am objecting that he is taking
11 part of what was said and this court has ordered us
12 previously when we were questioning Doctor Carnow to give him
13 all of the information.

14 MR. CARR: Not in a hypothetical question.

15 MR. HEINEMAN: Yes.

16 MR. CARR: I have not objected to any of your
17 hypothetical questions if there was any fact in the record to
18 support the hypothetical and you well know it.

19 MR. HEINEMAN: We are talking about here -- you
20 asked him to assume that Doctor Roush said that all of the
21 workers were exposed and I am saying that the record
22 demonstrates that Doctor Roush said theoretically.

23 MR. CARR: But he didn't, you see. He said yes,
24 they were, counsel.

1 MR. HEINEMAN: - But he didn't, you see.

2 MR. CARR: It is funny with Monsanto witnesses but
3 you can if you want to pick out anything at any point in time
4 that they said because they have testified, practically every
5 witness has testified two ways on each point in this case.
6 They have testified one time one way and then when they see
7 the significance of what they said they say something
8 different and I am entitled to use facts that are in evidence
9 when I ask witnesses to assume facts and that is what I am
10 doing, counsel.

11 MR. HEINEMAN: But you are not asking him to assume
12 all of the facts.

13 MR. CARR: I don't have to have him assume all the
14 facts.

15 MR. HEINEMAN: You are asking him to assume
16 something that is directly contradicted in another portion of
17 his testimony and I object to it, Your Honor.

18 THE COURT: Objection is overruled. The assumption
19 was proper.

20 (The following proceedings were had in the hearing
21 and presence of the jury).

22 Q. Would you read the question back to the witness.

23 COURT REPORTER: "Doctor Roush has testified that
24 all of the workers in that plant were exposed to TCDD at some

1 level. Now, you have said you don't agree with that but
2 Doctor Roush said --"

3 Q. Now, Doctor, what I am asking you, do you have any
4 knowledge of the conditions that existed at that plant that
5 would contradict what Doctor Roush said, if you assume what
6 he said is true, sir?

7 A. Only the report that you quoted for me, sir.

8 Q. Now, Doctor, that doesn't contradict what Doctor
9 Roush said, does it, sir?

10 A. I think it does, sir.

11 Q. In what way, Doctor?

12 A. Well, I think that one can assume that if there
13 were levels found in some areas and many areas not at all,
14 that the possibility of people, all people being exposed is
15 highly speculative, sir.

16 Q. Doctor, where did you conclude that they found many
17 areas not to be contaminated? What record do you have, sir,
18 to support that statement?

19 A. I don't have the report before me. You just
20 recalled for me that there was such a report, sir.

21 Q. Doctor, there was not.

22 A. And it is a very, very thick report as I remember
23 it with many, many parts to it which were done over some
24 months or maybe even a year or more.

1 Q. Doctor, let me give you the exhibit if you would
2 like and --

3 A. I would like the whole exhibit, the whole report of
4 Monsanto and the EPA and, I believe, it is a voluminous
5 report, sir.

6 Q. Doctor, what I have in evidence here are the
7 samples that were taken that is shown in Exhibit 1530, sir.
8 These are all that is in evidence, you understand, Doctor?

9 A. All that is here?

10 Q. There may be some documents, sir, that you can
11 recall from 30 years ago and, Doctor, I will report to you
12 that of the samples tested, 34 were found to have TCDD. Keep
13 that in mind, Doctor, would you, sir? And 20 were found not
14 to have detectable levels of TCDD. Will you assume that,
15 sir?

16 A. You are asking me to assume, sir?

17 Q. Will you assume, sir, that the exhibit shows that,
18 sir, of the soil sampled?

19 A. Yes. I believe that is not the only report.

20 Q. Doctor, it is the only document that is in evidence
21 in this case.

22 A. Okay.

23 Q. Do you understand that, sir?

24 A. And I must only refer to that, sir?

1 Q. If there isn't any evidence in this case, Doctor,
2 if we don't have any evidence, sir, you have to go on the
3 evidence that is. We can't manufacture evidence for you.
4 You understand that, don't you, Doctor?

5 MR. HEINEMAN: Objection, Your Honor. The witness
6 can testify about what he recalls.

7 THE COURT: Gentlemen, come on up.

8 (Bench conference had out of the hearing of the
9 jury.)

10 MR. HEINEMAN: First of all --

11 THE COURT: First of all, make the objection up
12 here and not in front of the jury.

13 MR. HEINEMAN: Your Honor, the witness is entitled
14 to testify about some information that he has that he
15 recalls. He is not limited to what Mr. Carr elects to put in
16 evidence here. Now, in terms of an assumption, Mr. Carr may
17 ask him to assume some things about documents that are in
18 evidence but he doesn't, he can't limit this witness's
19 testimony to something that is in evidence when the witness
20 recalls something else that isn't.

21 THE COURT: I think he was limiting the assumption.

22 MR. CARR: We can't consider something that isn't
23 in evidence. As a fact, we can't take anything that is not
24 in evidence.

1 MR. HEINEMAN: That is ridiculous. He can testify
2 about his recollection and it wasn't 30 years ago and I
3 object to that statement about 30 years ago and ask that it
4 be stricken and ask that the jury be instructed to disregard
5 it. The witness testified that was a result of what Vess
6 done very recently. It wasn't 30 years ago.

7 THE COURT: Do you have anything?

8 MR. CARR: No, Your Honor.

9 THE COURT: I don't think anything improper was
10 done. Overruled. Let's proceed.

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

13 Q. Doctor, if we have facts, do you have any knowledge
14 of any Monsanto sampling, sir, other than what we have here?

15 A. If you will allow me to see it, I think I can make
16 a judgment, sir. This is a Monsanto report. I recall there
17 was an EPA section to it as well, sir. I don't find it
18 here. It was a joint study and Monsanto did some of the
19 analyses and the EPA did others and they compared results, so
20 I would assume that this only represents part of the analyses
21 and also in looking through this, the number of none, the
22 number of none found and I think it is parts per trillion
23 here, I can't make it out in this copy, the number of --

24 Q. Parts per billion, Doctor.

1 A. Well, parts per billion, and the number of no's in
2 there is, I believe, more than 20, sir.

3 Q. Doctor, you are reading two separate analyses.
4 Would you like to count up the number of detected in the
5 entire exhibit versus the number of none detected?

6 A. It would take a long time.

7 Q. No, it wouldn't take very long at all. It would
8 just take a few minutes, Doctor. It wouldn't take as long as
9 it takes for you to look at it. You will find that over 66
10 percent of these samples were found to be contaminated with
11 TCDD, wouldn't you, Doctor?

12 A. No. I haven't counted them so I can't tell you,
13 sir, and you have asked me to assume that and I have assumed
14 it and in most instances, the levels are in small fractions
15 of a part per billion which is not significant.

16 MR. CARR: Your Honor, direct the witness that he
17 knows what he is doing now is improper because I did not ask
18 him about significance or insignificance. I asked him and
19 the doctor is shaking his head, he knows that I asked him
20 about contamination at some level. You know that, don't you,
21 Doctor?

22 A. Yes, I do, sir.

23 THE COURT: Doctor, I am asking you again. I have
24 asked you repeatedly and you still continue to respond beyond

1 the questions that are asked or to answer non responsively to
2 the questions that are asked. Now, I am asking you again,
3 respond only to the question that is asked of you, no more,
4 no less, and not differently, but to the question that has
5 been posed to you at that time by whichever attorney has
6 posed the question to you. Do you understand, Doctor?

7 A. Yes, sir.

8 THE COURT: Now, please follow that.

9 Q. Doctor, you know when you gave that response that
10 you were going beyond my question, didn't you, sir?

11 MR. HEINEMAN: Objection, Your Honor. That
12 question is not for Mr. Carr's perview.

13 THE COURT: Objection is overruled.

14 A. No, I did not, sir.

15 Q. You did it inadvertently. You didn't understand
16 that I was asking you about the level of contamination at any
17 level, sir, and not as significant. Didn't you understand
18 that, Doctor Suskind?

19 A. I was answering it as honestly and frankly as I
20 could.

21 Q. Didn't you understand my question to relate to just
22 the contamination and not whether or not it was significant?
23 You understood that, didn't you, sir?

24 A. Well, no. I really didn't.

1 Q. And remind you you are under oath here, don't you,
2 Doctor?

3 A. Well,, if that is the way you want me to answer it,
4 I will answer it that way.

5 Q. No, Doctor, I want you to answer to the truth. You
6 did understand that I was asking you questions without regard
7 to whether or not you believe they were significant, didn't
8 you, sir?

9 A. No, sir.

10 Q. And you realized that you just said a moment ago
11 that you did know I was asking about contamination without
12 regard to the level. Now, Doctor, explain those two answers,
13 if you can, sir?

14 A. Well, I am answering as honestly as I possibly can,
15 sir.

16 Q. Doctor, I want you to explain how a minute ago that
17 you could answer yes, you understand that I was not asking
18 about significance and now you say you didn't understand it.
19 Please explain this, Doctor?

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

22 THE COURT: Yes, you may.

23 (Bench conference had out of the hearing of the
24 jury.)

1 MR. HEINEMAN: My recollection of what Mr. Carr is
2 asking is not accurate. I don't think he just admitted what
3 Mr. Carr is suggesting he admitted. I think he said he
4 didn't.

5 THE COURT: I think he did. I think he has
6 answered both ways. It is a proper question. Overruled.

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

9 Q. Can you explain the two contradictory answers,
10 Doctor?

11 A. I really honestly feel that they are not
12 contradictory, sir.

13 Q. You don't think that those two answers are
14 contradictory?

15 A. No, I do not.

16 Q. You said once that you did understand that I was
17 just asking about contamination and not whether or not it was
18 significant. You recall that, don't you, sir?

19 A. I think you asked me contamination at any level.

20 Q. Yes.

21 A. You didn't say significance, sir.

22 Q. And you understood that you agreed I was asking
23 about contamination at any level, didn't you, sir?

24 A. Correct, I do.

1 Q. And now, Doctor, you just a moment later said that
2 you didn't understand that I was asking about that, didn't
3 you, sir?

4 A. No. I thought that I was answering your question
5 about significance.

6 Q. Doctor --

7 A. And there was a difference, sir.

8 Q. Yes, Doctor. You know good and well from the
9 beginning that I have been asking you questions about whether
10 or not there was contamination at any level and you know my
11 question about Doctor Roush referred to any level. You know
12 that, don't you, Doctor, and you have known it from the
13 beginning, haven't you, Doctor?

14 A. No, sir, I did not.

15 Q. You did not know that?

16 A. I heard Doctor Roush's testimony here for the first
17 time, sir..

18 Q. And, Doctor, you know I am not asking you about
19 Doctor Roush's testimony for the first time?

20 A. You just did.

21 Q. You know that I am asking you about the
22 significance -- about the level of contamination, not with
23 regard to its significance. You know that, whether there was
24 contamination at any level. You know that, don't you,

1 Doctor?

2 A. Well, I will answer it now as you wish, sir.

3 Q. You know that and have known that all the time I
4 have been asking this series of questions, isn't that
5 correct, sir?

6 A. I am sorry. I did not understand it that way, sir.

7 Q. You thought I was asking about significance,
8 Doctor?

9 A. No, I didn't.

10 Q. You knew good and well I wasn't asking about
11 significance, didn't you, Doctor?

12 A. But my interpretation, sir --

13 Q. Doctor, my question is, you knew good and well I
14 wasn't asking about significance of contamination, did you
15 not, sir?

16 A. No, sir.

17 Q. Now, Doctor, let's pass on to this. There are on
18 this sheet 1529, there is 13 samples where it is detected and
19 one where it is not detected, is that correct, sir?

20 A. On this sheet, that is what it shows, sir, in that
21 exhibit.

22 Q. Is that correct, sir?

23 A. That is correct, for that piece.

24 Q. And on this part of Exhibit 1530, sir, there are 13

1 where there are detectable levels and 7 where there are not,
2 isn't that correct, sir?

3 A. That is correct, sir.

4 Q. And on this sheet, sir, there are 13 that are
5 detectable and 11 that are not, isn't that correct, sir?

6 A. That is true, sir.

7 Q. And on this sheet there are 7 where it is detected
8 and 2 that are not, isn't that correct, sir?

9 A. That is correct, sir.

10 Q. On this sheet there are 13 that are detectable and
11 7 that are not, isn't that correct, sir?

12 MR. HEINEMAN: Which sheet are we talking about
13 here, sir?

14 MR. CARR: It is part of the same exhibit, counsel.

15 MR. HEINEMAN: 1530?

16 MR. CARR: Yes. It is number C10923.

17 MR. HEINEMAN: 1530 which you gave me doesn't go to
18 that.

19 MR. CARR: Counsel, you gave me the exhibit, I
20 didn't give them to you.

21 MR. HEINEMAN: No. You had them marked as exhibits
22 and this is the one you gave me.

23 MR. CARR: They may be intermingling but whether
24 they are 1530 or not, counsel, is not important. He has

1 looked at this file and said there is a certain number there
2 and a certain number not and that is the point that I am
3 trying to establish.

4 MR. HEINEMAN: We don't have any duplicates.

5 MR. CARR: There may well be duplicates but the
6 point is the witness looked at this exhibit and said there is
7 a lot more where there are none detected. That is the
8 point. I have already proven the point that it is
9 contaminated. I have attempted to show that this witness is
10 again in error and I see --

11 THE COURT: Mr. Carr, proceed.

12 Q. Doctor, on this sheet C10923 there are 13
13 detectables and 7 that are not, isn't that correct, sir?

14 A. On this sheet, that is correct, sir.

15 Q. Now, Doctor, I do want to point out that it is
16 clear that we are looking at the same table twice, isn't that
17 correct, sir?

18 A. I am not really sure I follow.

19 Q. Doctor, when you took this exhibit and looked at
20 it, they had the same tables in their duplicate and you said
21 to this jury that there is a lot that I haven't counted and
22 it would show a lot different. Do you understand that,
23 Doctor?

24 A. But we are not counting duplicates now, sir, are

1 we?

2 Q. Yes, we are indeed.

3 A. I have not been aware of that.

4 Q. I know you are not aware of that, Doctor, because

5 you said something to this jury that I left out sheets that

6 showed no contamination and what you did --

7 A. No, I didn't say they were in here, sir.

8 Q. Yes, you did, Doctor.

9 A. No, I didn't.

10 Q. Right here, that I failed to count many. That is

11 the reason --

12 A. No, I didn't, sir. I said --

13 A. May I explain, sir?

14 Q. No, you can't explain because what you said was the

15 whole reason for going through this exercise is that you said

16 there were many more non detected in this exhibit which I had

17 not counted?

18 A. Not this exhibit, sir.

19 Q. Doctor, why do you think we went through counting

20 them if it wasn't to show that, sir? You said it would take

21 a lot of time to count these. Do you recall that, sir?

22 A. Yes, but I am referring to an analysis which

23 doesn't appear here and that is the EPA analysis, sir, which

24 is not --

1 Q. Doctor, you were not referring to an EPA analysis.
2 You were referring to this exhibit when you said that and we
3 were counting this exhibit?

4 A. I wasn't contradicting you, Mr. Carr. I had no
5 intention to. All I was saying is that I could recall
6 spending many hours reviewing -- May I finish?

7 MR. CARR: Your Honor, would you direct the witness
8 to not respond to a question that hasn't been asked?

9 MR. HEINEMAN: Your Honor, may counsel approach the
10 bench please?

11 MR. CARR: And could we get the Court Reporter to
12 find, so that we can resolve this argument, to find what
13 precipitated this counting

14 (Bench conference had out of the hearing of the
15 jury.)

16 MR. HEINEMAN: I know the page in my Exhibit 1528
17 which he did not ask the witness about and that is the one
18 that has all the wipe samples that are not detected. I don't
19 recall him asking the witness about a single page that had no
20 detectable limits on it at all and here is one that I find.

21 MR. CARR: Your Honor, counsel is obviously bringing
22 up a matter that isn't even before us.

23 MR. HEINEMAN: Isn't before us? He is supposedly
24 impeaching this man.

1 MR. CARR: I haven't even finished yet, counsel.

2 MR. HEINEMAN: Haven't finished what?

3 MR. CARR: Impeaching this witness and you well
4 know it. You are now trying --

5 MR. HEINEMAN: With this exhibit?

6 MR. CARR: The point that we have here, Your Honor,
7 is why we started this.

8 MR. HEINEMAN: May I make my record?

9 THE COURT: Wait a second. You brought up saying
10 that is not relevant and you brought it up in the middle of a
11 tangent that was started by this witness and we are going
12 down this that is not relevant to anything that we are
13 doing. Let's get back on the track and, Mr. Carr, why don't
14 you go back to the substantive part of it. I think that what
15 has been said in front of the jury has been said. They have
16 heard it and seen it just as well as the three of us have and
17 we are killing valuable time on a straight diversion.

18 MR. HEINEMAN: May I make a two second record?

19 THE COURT: Not right now. You can do it
20 afterwards.

21 (The following proceedings were had in the hearing
22 and presence of the jury).

23 Q. Doctor, the exhibits, the record that we just went
24 through here, this 1530, that is the only one, and 1529, sir

1 -- excuse me, that is not an exhibit. That is some of my
2 records.

3 A. Sorry.

4 Q. 1529, sir, shows approximately 60 percent of the
5 samples or better with contamination, isn't that correct,
6 sir?

7 A. I haven't calculated the percentage, sir.

8 Q. Doctor, we counted 34 detectables and 16 non
9 detectables in this exhibit alone before we started going
10 through the duplicates, do you recall that, sir?

11 A. Well, I don't recall when you went through the
12 duplicates, sir. I honestly don't.

13 Q. Doctor, do you recall that we counted 34 and 16 in
14 Exhibit 1530?

15 A. I have a different figure but I have a total figure
16 which I believe is inaccurate because I didn't take down all
17 of the yes's and the no's, sir.

18 Q. Doctor, will you accept that the count in 1530 is
19 34 and 16?

20 A. If you ask me to assume that, I will, sir.

21 Q. Doctor, if that is so, that is better than 60
22 percent of the samples taken shown in this exhibit that show
23 TCDD contamination, isn't that correct, sir?

24 A. Shows what kind of contamination?

1 Q. TCDD contamination?

2 A. It shows some presence of TCDD, yes.

3 Q. Is the answer to my question, sir, that it does

4 show some TCDD contamination?

5 A. If that is the way you want to put it, yes, it

6 does.

7 Q. Doctor, that is the way that I put it. That is the

8 way I ask you. Whether or not it shows TCDD contamination,

9 isn't that correct, sir?

10 A. It shows the presence of it.

11 Q. Isn't that the way that I put it, sir? The

12 question was asked you whether or not it shows contamination?

13 A. If you want to use the word contamination, I will

14 accept that.

15 Q. And it does show contamination in 60 percent of the

16 areas tested as shown in this exhibit, doesn't it?

17 A. It shows levels of the TCDD, yes.

18 Q. Thank you, Doctor. Now, Doctor, is there any

19 record that you know of that would contradict Doctor Roush

20 when he says that these workers were exposed?

21 A. Yes.

22 Q. And what record is that, Doctor?

23 A. The records that you have shown me as well as --

24 may I finish? There is no record in there and I don't see

1 them of the levels of TCDD in the open areas, the roadways.

2 All buildings as I gather, is that not so?

3 Q. No, Doctor, this is landfill. None of the samples
4 that you went through --

5 A. Landfill --

6 Q. -- had anything to do with buildings. It was the
7 area where the parking lot was. Where the people park their
8 cars.

9 A. Okay. That is one area, sir.

10 Q. Yes, Doctor. That is the area there, the building
11 that we are talking about, the area there we are talking
12 about is the parking lot area, sir.

13 A. There are other samples and analyses where the
14 contamination of the soil is and in the reports that I have
15 seen, sir, there are very few that show the presence of TCDD
16 at the surface. They all show presence. Not all but some of
17 them, some of them show some TCDD below the level of the
18 surface which is not bioavailable. Now --

19 Q. Doctor, are you aware of the fact that Monsanto put
20 two inches of concrete over some of this soil that was not
21 bioavailable, put asphalt over some of the soil that was not
22 bioavailable and put crushed limestone over the remainder of
23 this soil that was not bioavailable? Are you aware of that
24 fact, sir?

1 A. No, sir, I am only --

2 Q. Well, please accept that as true, if you would,
3 sir.

4 MR. HEINEMAN: Your Honor, could we have an exhibit
5 citation, please?

6 MR. CARR: Your Honor, I don't know that I am
7 constrained to give an exhibit citation but the particular
8 exhibit is 1527, Plaintiffs' Exhibit 1527. It is Nitro's
9 response to the request of the EPA for remedial work.

10 Q. And in this response, sir, they say that the posed
11 remedial action consists of paving asphalt in the areas where
12 2,4,5-T was manufactured, removal of soil from a small
13 contaminated area, covering the area where a trash
14 incinerator was located with crushed limestone and providing
15 a clay cap over the disposal site of the equipment and put
16 grade to promote proper drainage. Crushed limestone will be
17 added as a suitable place for paving. These are blocks, not
18 a building, but a Blocks H and I will be paved with two
19 inches of asphalt, gravel area will be paved with four inches
20 of concrete. A six inch concrete pad will be poured at the
21 southeast corner of Building 41 in Block H. Contaminated
22 soil will be removed from 120 foot by 60 foot area where it
23 was detected inside the fence. An earthen dike will be
24 created to contain the runoff. Additional limestone will be

1 provided to assure that the entire area is covered with a
2 minimum thickness of three inches. Did you know all of that,
3 Doctor?

4 MR. HEINEMAN: Did you leave out the six inches to
5 handle truck traffic, sir?

6 Q. Yes, a six inch thick concrete pad will also be
7 poured at the southeast corner of Building 41 to handle truck
8 traffic from a loading dock. Were you aware of all of that,
9 sir?

10 A. As a matter of --

11 Q. Doctor, were you aware of all of that, sir?

12 A. Not of that particular one but I do know --

13 Q. Doctor, assume that this is true: That this is
14 what Monsanto was going to do to the area where they detected
15 this TCDD that you said was not bioavailable. Will you
16 assume that, sir?

17 A. That is not what I was talking about, sir.

18 Q. Doctor, will you assume that, sir?

19 A. I wasn't talking about that, sir.

20 Q. Doctor, this is the evidence, this is the EPA
21 response that Monsanto makes to the EPA charges. This is
22 what they said. It is in evidence. There isn't any evidence
23 of any other response, Doctor. It doesn't exist in this case
24 so far as I am aware. Now, will you assume that this is what

1 the facts happen to be?

2 A. At that time, sir, in 1984 or '85.

3 Q. Is that right, Doctor?

4 A. I wasn't talking about that.

5 Q. Doctor, the 1984 response to the EPA request is the
6 only EPA request that took place.

7 A. But the EPA did analyses before that.

8 Q. Doctor, I am now talking to you and asking you,
9 Doctor, to assume that this is what Monsanto did to contain
10 the TCDD in the soil that you said was not available. Will
11 you assume that?

12 A. I did say it was not available and in the areas
13 that I was talking about it wasn't, sir.

14 Q. Will you assume that please, sir?

15 A. I can only assume that that is a report, sir, yes.

16 Q. What did they do to these areas that you are
17 talking about?

18 A. They -- I don't know, sir, but --

19 Q. Doctor, this is what they did to those areas.

20 A. Not the areas I am talking about, sir.

21 Q. Doctor, there are no other areas.

22 A. Yes, there are, sir.

23 Q. Doctor, if there is, you can bring the documents
24 forward, all right, because, believe me, if there were more

1 and Monsanto gave them to me, I would have used them because
2 I am interested in showing the areas that are contaminated.

3 A. They are in the soil analyses, sir.

4 Q. Doctor, are you saying that there are other
5 analyses that you are aware of that the Nitro Plant -- other
6 areas that were contaminated that I haven't described to you
7 in these exhibits?

8 A. They weren't contaminated on the surface. That is
9 what I am talking about.

10 Q. Doctor, my question to you, is there other areas
11 that had TCDD in it that we have not discussed here today,
12 sir?

13 A. Well, I haven't seen all the reports.

14 Q. Doctor, my question to you is, are there other
15 areas of contamination of that plant that haven't been --
16 regardless of the depth of the contamination in the soil, are
17 there other areas, other exhibits, other information that you
18 have seen that we have not discussed here about the Nitro
19 Plant?

20 A. I know there are at least --

21 Q. Could you answer that question, Doctor? You can
22 say yes, there is other information that you have not, that
23 we have not described to you here today or you can say there
24 is not.

1 A. There is other information which is not described.

2 MR. CARR: Your Honor, I would like to have a motion
3 on Monsanto to produce these other areas of contamination.

4 THE COURT: Gentlemen, approach the bench please.

5 (Bench conference had out of the hearing of the
6 jury.)

7 THE COURT: First of all, before we go on this
8 motion, we have spent about 15 minutes this afternoon on a
9 request for citation for something, re-proving things,
10 re-introducing things that have been re-introduced at various
11 times before. I am now instituting a rule which we will put
12 on all parties, all counsel for all parties that if there is
13 a request for a citation as to the basis of something, either
14 in the evidence or documentary, it is to be made at the bench
15 because there is no reason to have to go through
16 re-establishing again what this witness did before in the
17 testimony in this case. And I think the appropriate, the
18 expeditious way to handle these requests in the future will
19 be at the bench rather than in front of the jury. Do you
20 understand that?

21 MR. HEINEMAN: Yes, I do.

22 THE COURT: Well, you made the motion.

23 MR. CARR: I ask if there are other areas that are
24 contaminated in addition to what we have discussed here, I

1 want Monsanto to produce them because I thought we had all of
2 the areas of contamination that are described in any exhibit
3 and if there are others, I want them.

4 THE COURT: Before I forget, please inform the
5 members of your firm in trial capacity here what to do
6 because I want notice to you to be notice to them.

7 MR. CARR: What I want is a statement from Monsanto
8 now so that I don't have to put up with this stuff that this
9 is the sum total of the areas that they know that were
10 contaminated. I want one of the two. I either want the new
11 information in addition that there were other areas
12 contaminated in addition to what we have here or I want an
13 affirmation on the record from counsel that there is no other
14 areas that are contaminated, other than what we have here.

15 MR. HEINEMAN: The information that I am aware of
16 that the witness is referring to is the EPA test results and
17 those have been provided to Mr. Carr.

18 MR. CARR: Which are the same areas, counsel. The
19 same areas. Anyplace that it was found contamination. This
20 exhibit so far as you have told us or so far because this is
21 a written description to the EPA request of their remedial
22 work. Exactly what it is, and this witness is fabricating
23 because this, so far as I know, is the sum total of the areas
24 that were found by anybody at Nitro to be contaminated. Now,

1 I either want the additional areas that were contaminated or
2 I want a statement in the record here for this witness to be
3 aware of that this is the sum total of the areas that are
4 contaminated.

5 MR. NASSIF: This map shows where they decided to
6 take remedial action based upon the analysis performed both
7 by the EPA and by Monsanto.

8 MR. CARR: Exactly right.

9 MR. NASSIF: It does not say that they did not find
10 somewhere out here a sample that you have, that you have,
11 that they decided not to pave over or to take any other
12 remedial action.

13 MR. CARR: Is there some other information about
14 some other contaminated area that is not described here? I
15 want it.

16 MR. NASSIF: You have all of them and all he is
17 saying is that he doesn't see the EPA document. This guy
18 doesn't know that you have shown him everything. You haven't
19 even told him you have told him everything. All you have
20 shown him are the Monsanto test results. He does not know
21 that Monsanto and the EPA are the same.

22 MR. CARR: What I have shown him is the remedies
23 that are taking place.

24 MR. NASSIF: That is right. He doesn't know this

1 document is a proposal response. This is not even a final
2 document.

3 THE COURT: Are you saying that the areas covered
4 by the two are the same?

5 MR. NASSIF: Quite frankly, Your Honor, all I know
6 is he has got all the documents that we have. I can't tell
7 you that I have compared the EPA document with the Monsanto
8 test results and I know that each one of those tested, each
9 one of those numbers were from the same area. I can't tell
10 you that. I would not stand by and say that this chart,
11 these little blacked out points and these lines cover every
12 area of the plant that they had any findings because I don't
13 know if they decided to cover every area whether they had one
14 finding out of 10 or not.

15 THE COURT: We have been going about an hour. This
16 is a good point for a break. The four of you get together
17 and look at all the documents and come up with the statements
18 as to whether these areas are the same or not. If you are
19 claiming you gave them all this --

20 MR. CARR: The plaintiff has represented that we
21 have put forth all the evidence that we have as far as any
22 contamination that Nitro is concerned, no matter who found
23 it, and that this exhibit covers what is going to be done
24 with all the contamination found by anybody.

1 THE COURT: Right.

2 MR. CARR: He is saying there is some other areas
3 that had contamination down here that is not covered by this
4 exhibit. If there are such areas, counsel surely would know
5 about it. I say none exist that are not covered by this
6 exhibit. There are no areas.

7 THE COURT: Are you saying that others exist?

8 MR. HEINEMAN: I know of one document that he
9 didn't even show this witness that shows none detectables.
10 That is something I approached the bench.

11 MR. CARR: Wipe samples from a building, counsel, I
12 am talking about and he is talking about and we know you are
13 talking about soil contamination, buried so deep in the soil
14 it wasn't bioavailable. You know that is what we are talking
15 about.

16 MR. HEINEMAN: All this does, and he has never even
17 shown the witness this document which is Plaintiffs' Exhibit
18 1527 so when he is talking about areas, the witness doesn't
19 know what areas he is talking about.

20 THE COURT: That document has been explained to
21 him. It was explained to him.

22 MR. HEINEMAN: What was read to him were quotations
23 out of these paragraphs. He has never seen the map. He has
24 never been shown the map.

1 THE COURT: The question of him, it was explained
2 what this document was and the purpose of this document. Are
3 there other studies either Monsanto generated, the EPA
4 generated or joint generated showing contamination of soil?

5 MR. HEINEMAN: These studies which Mr. Carr has
6 show all of the studies of soil samples that have been taken,
7 all right. That doesn't mean, Your Honor, that C11961 which
8 shows portions which are blacked in or lined over and that
9 sort of thing corresponds to all of those same areas. In
10 other words, let's assume they do a grid --

11 THE COURT: Right. That is something that involves
12 action to be taken.

13 MR. HEINEMAN: This involves things to be covered
14 over.

15 THE COURT: Now you are going off on a tangent.
16 That is not what I asked you. Are there any other studies
17 generated either separately by the two or jointly showing
18 other areas of contamination other than what has been
19 produced to Mr. Carr?

20 MR. HEINEMAN: No. What Mr. Carr has --

21 MR. CARR: Then I want an affirmation on the record
22 that there are no other areas other than described in this
23 exhibit that were contaminated.

24 MR. HEINEMAN: I am not going to give you that

1 because that is nonsense because this exhibit only shows the
2 places that are being covered over.

3 MR. NASSIF: Where they are taking the remedy.
4 There could be other places based on the grid. There could
5 be other samples. There might be a sample out here, Your
6 Honor, of where they found one part per billion but they
7 decided not to. You have got it in the data. The data he
8 has gotten identifies where the samples were taken. It could
9 be right here but they might not have decided to put some
10 parking lot or asphalt because there is only one location.

11 MR. CARR: You are doing something but speculating.
12 Are you saying that you know of other areas in the Nitro
13 Plant other than what is described in this exhibit 1527 that
14 were contaminated, found to have contamination in the soil?

15 MR. NASSIF: I am saying there might be. We
16 haven't compared the grid to this.

17 MR. CARR: Then you are speculating, counsel.

18 MR. NASSIF: But you are asking for an affirmation
19 that there isn't and we can't give you that.

20 MR. CARR: If you can't, then the witness can't say
21 that there is but he is, isn't he?

22 MR. HEINEMAN: You haven't shown him the document.

23 MR. CARR: I don't have to show him the document.

24 MR. NASSIF: He believes that there are by the EPA

1 document.

2 MR. CARR: He hasn't the vaguest idea where this all
3 is that is contaminated. He is making up a story simply to
4 try to resist the availability, bioavailability of this
5 material. He knows good and well that every place that was
6 found to have TCDD contamination in the soil was either
7 removed or covered up with something else.

8 MR. HEINEMAN: Do you know that?

9 MR. CARR: Yes, according to the evidence that I
10 have been given by you.

11 MR. HEINEMAN: Can you tell me that all of the data
12 that has been given to you has been covered over in that last
13 page of that exhibit.

14 MR. CARR: Yeah.

15 MR. NASSIF: Every place that they found TCDD?

16 MR. CARR: To my knowledge, that you have given us
17 have been covered.

18 THE COURT: Okay. Do you have any data -- you
19 claim that you have given the plaintiff all the data as to
20 all soil analysis at Nitro, right?

21 MR. NASSIF: Yes, Your Honor.

22 THE COURT: Do you have any evidence within that
23 data of areas contrary to the areas that Mr. Carr has pointed
24 to as far as areas of contamination substantiating his