

1 A. No, sir.

2 Q. You interpret this to mean that it has been
3 intermittently numb?

4 A. It could be either, sir.

5 Q. Excuse me, Doctor, my question is do you interpret
6 this to mean that his feet have been intermittently numb?

7 A. No, sir.

8 Q. Doctor, this complaint on face value is an unusual
9 problem, isn't it, sir?

10 A. It might be.

11 Q. Doctor, it either is or it isn't.

12 A. No, sir. I cannot answer it that way, sir. It
13 might be depending upon severity and depending upon
14 persistence.

15 Q. Doctor, for anybody to have intermittently, even
16 intermittently numb, both feet intermittently numb for five
17 years, that also would be an unusual occurrence, wouldn't it,
18 sir?

19 A. If it were disabling, yes.

20 Q. Doctor, I didn't ask if it was disabling. Would it
21 have to be disabling for it to be unusual?

22 A. I believe so, yes.

23 Q. Doctor, do you know of anybody that has feet that
24 are intermittently numb off and on for five years, both his

1 feet numb? Have you ever heard of that from anybody other
2 than this patient?

3 A. Yes, I have, sir.

4 Q. How many?

5 A. Many people with low grade arteriosclerosis have
6 numb feet. Intermittently. It is a common problem, sir.

7 Q. Doctor, this man, is there any indication in this
8 man's records that he has any kind of arteriosclerosis or
9 atherosclerosis or any other circulatory problem?

10 A. I haven't examined the whole thing so I can't tell
11 you.

12 Q. He dates it with an exposure to the dioxin, doesn't
13 he, sir, just as he based his trouble with his sexual problem
14 with the five years from the dioxin?

15 A. No, sir.

16 Q. One time exposure?

17 A. No, sir.

18 Q. Doesn't he say that they have been numb for five
19 years, sir?

20 A. Yes, but that doesn't mean to say they are related
21 to the dioxin exposure, sir.

22 Q. Doctor, this report is in 1955, isn't it, sir?

23 A. Yes.

24 Q. And this is some five years from his exposure?

1 A. I don't know when he was first exposed, sir.

2 Q. Doctor, he tells you he was exposed -- in the very

3 first paragraph he tells you that it was two weeks, about a

4 month after the explosion is when the aching pains started,

5 doesn't he, sir?

6 A. The aches and pains, sir, yes, sir.

7 Q. So you do know when he was exposed, don't you, sir?

8 A. Yes, sir.

9 Q. And that exposure, sir, that explosion was in 1949,

10 wasn't it, sir?

11 A. It appears to be according to this record, sir,

12 yes.

13 Q. Doctor, you know the explosion was in 1949, don't

14 you, sir?

15 A. I do, sir, yes.

16 Q. And his problem occurred five years prior to the

17 time of his examination, didn't it, sir, which would be after

18 the date of the explosion?

19 A. It would be after the date of the explosion, sir,

20 yes.

21 Q. Doctor, he also says that he has eye trouble that

22 started five years ago, doesn't he, sir?

23 A. That is what the record reads, sir, yes.

24 Q. He also says that his, he has the desire just as

1 much as ever but he is unable to get an erection. He has
2 been that way for four or five years and it seems to stay
3 about the same, doesn't he, sir?

4 A. According to this record, sir, yes.

5 Q. That is an unusual problem, isn't it, sir?

6 A. It all depends upon the age of the man, sir, yes.

7 Q. Doctor, is that a yes to my question that it is an
8 unusual problem for a man, hard-working man, and we don't
9 know what his age was here, for a man who is in his prime
10 working years to have an inability to get an erection
11 starting from the explosion on for a period of five years?

12 A. That might be unusual sir, yes, sir.

13 Q. Now, Doctor, you said again it might be. It is
14 unusual, isn't it, sir?

15 A. There are other reasons for not being able --

16 Q. I know that. I am not talking about reasons. I am
17 just saying this is an unusual problem, isn't it, sir?

18 A. It is a problem, yes.

19 Q. My question, sir, it is an unusual problem?

20 A. It is not an unusual problem. It is a rather
21 common problem in many males, sir.

22 Q. It is a common problem for males in their prime of
23 their life to get an erection? Impotence is a common
24 problem?

1 A. Depending upon the circumstances, sir.

2 Q. Doctor, we are talking about ordinary average
3 American males between 20 and 60 or 20 and 65. It is
4 unusual, it is an uncommon problem for those males to be
5 unable to get an erection, isn't that correct, sir?

6 A. No, sir.

7 Q. And what percentage of men does this occur?

8 A. I have no idea.

9 Q. Doctor, if you had no --

10 A. You said 65 and it is common in people 60 to 65 not
11 to be able to perform, sir.

12 Q. Doctor, it is not common for people 60 to 65 to be
13 able to get an erection?

14 A. It is not uncommon, sir.

15 Q. Doctor, it occurs with advancing age but we are
16 talking here about men and practically every one of these
17 men, and you know the ages of these men. Practically all of
18 these men have had the same problem, unable to get an
19 erection, all dating from the time of the explosion, from the
20 exposure. Doctor, doesn't that strike you as a strange and
21 unusual problem?

22 A. No, sir.

23 Q. And I take it, then, that you did not consider it
24 strange and unusual and that is one reason you did not

1 mention it in your subsequent reports on this incident, is
2 that correct, sir?

3 A. Yes, we did, sir.

4 Q. You did mention it, sir?

5 A. In the 1949 and '50 report we mentioned the loss of
6 libido.

7 Q. Doctor, you didn't mention it in 1973 or 1978 or
8 1980, did you, sir?

9 A. If you are talking about those references --

10 Q. Doctor, you did not mention it?

11 A. There was no reason to mention it, sir, because --

12 Q. Doctor, the only reason not to mention it would be
13 because you didn't think it was unusual --

14 MR. HEINEMAN: Objection, Your Honor, interrupting
15 the answer.

16 THE COURT: Objection is overruled.

17 Q. Isn't that correct, sir?

18 A. We didn't think it was unusual and we did not feel
19 that that was significant. When it was described to us, sir,
20 in '53 when most of these people had told us that they could
21 perform in '53, sir, in '53, and my report in 1953
22 substantiates all the things I have been saying, sir.

23 Q. And, Doctor, here in 1955 you have a Monsanto
24 physician who's examined these people and they are all having

1 problems of erection, or not all but --

2 A. They claim that they are, sir.

3 Q. Yes, Doctor, and we have already established that
4 you believe and you have said on a number of times that these
5 are truthful people, haven't we, sir?

6 A. Sorry, I didn't hear that.

7 Q. We have established that you believe these men were
8 truthful and are a truthful group of people on a number of
9 times. We have established that, haven't we, sir?

10 A. I believe, sir --

11 Q. Excuse me, Doctor. My question is, we have
12 established before in this courtroom that it is your view of
13 these people that they are not lying, that they are telling
14 the truth, they are truthful, isn't that correct, sir?

15 A. In the instance of this examination, sir, I cannot
16 say.

17 Q. Would you answer my question please as I stated it
18 to you?

19 A. No, sir.

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

22 A. I am answering it. I said no, sir.

23 Q. You have not testified that these men in your view
24 were truthful, sir?

1 A. Yes, sir. In my examination.

2 Q. Doctor, now that is what I have asked you.

3 A. In my examination.

4 Q. Doctor, do you understand my question? The only way

5 you have to judge these people is when you saw them in your

6 examination.

7 A. Correct, sir.

8 Q. Isn't that correct, sir?

9 A. Correct.

10 Q. When you saw these people, when you looked at these

11 people, it was your belief that they were truthful and not

12 telling lies, isn't that correct, sir?

13 A. I believe --

14 MR. HEINEMAN: Objection. They are not all the

15 same people.

16 MR. CARR: I didn't hear your answer.

17 THE COURT: Objection is overruled.

18 MR. CARR: I didn't hear your answer, Doctor.

19 A. Would you repeat the question?

20 (Court Reporter read back the last question.)

21 A. I believe they were not telling lies. They

22 believed that they had these problems, sir, yes.

23 Q. And --

24 A. And we have been through that before, sir.

1 Q. Yes, we have.

2 A. But this is a different examination.

3 Q. Doctor, you believed that they were telling the

4 truth as they perceived it to be, isn't that correct, sir?

5 A. I believe that is so.

6 Q. Now, Doctor, and you disregarded these subsequent

7 reports that these men had inability to have erections. In

8 many cases you disregarded that and did not report that to

9 the world in your 1973, in your '78, in your 1980 report, did

10 you, sir?

11 A. I don't know what you are saying, sir. I have not

12 seen this until you gave it to me, Mr. Haning's report, and

13 that is what you have given me. I see it for the first time.

14 Q. Doctor, you have testified at least it is in the

15 compensation commission hearing that you have testified that

16 these reported had been given to you, sir?

17 MR. HEINEMAN: Objection, Your Honor.

18 A. Not this report.

19 MR. HEINEMAN: It was in the question, not in the

20 answer.

21 Q. Doctor. Relating --

22 THE COURT: Objection is overruled.

23 Q. Relating just to these, not just to this report, we

24 have gone through a number of these men, now, who have said

1 that they had a problem getting an erection, not just this
2 gentleman, isn't that correct, sir?

3 A. That is quite so, sir.

4 Q. And, Doctor, you did not -- and you were aware of
5 that in the '56 --

6 A. I was not aware of it from these reports, sir. I
7 was -- May I finish, sir? I was only aware of what I did in
8 my 1953 examination and I didn't examine Mr. Haning in the
9 1953 examination.

10 Q. Doctor, my --

11 A. Didn't examine him, so we are talking about apples
12 and oranges.

13 Q. Did you not read these reports, Doctor, before you
14 testified at the --

15 A. I did not, sir. I did not see this report.

16 Q. Doctor, I didn't say just this report, did I, sir?
17 Did you not read Nestmann's reports before you testified
18 before the commission?

19 A. If I did, I can't recall them specifically. This
20 is only, sir, this is only -- Let me finish. This is only,
21 sir, a memorandum in 1955 which indicates that I did.

22 Q. Yes. Okay.

23 A. And at that time I don't know whether it was this
24 report or any other report, as a matter of fact, sir. So

1 that -- May I finish?

2 Q. I am allowing you to finish, Doctor. Please
3 proceed.

4 A. So that I can't tell you. I can't tell you that I
5 have seen any of the reports that you are providing for me
6 today and yesterday.

7 Q. Doctor, the November, 1955, memorandum said you saw
8 the reports and the question that was asked you in 1956
9 before the commission said that you saw the reports?

10 A. In '55, sir?

11 Q. The question asked you at the commission was in
12 '56, sir.

13 A. Yes, I know, but they were referring to my viewing
14 them in '55.

15 Q. Well, then, you did see them?

16 A. Well, if I did, I have no recollection of ever
17 having seen these and, furthermore, I have no recollection
18 whatsoever that loss of libido, loss of libido and failure to
19 achieve an erection was ever mentioned in those reports, sir.

20 Q. Doctor, my question to you, sir -- now, you have
21 acknowledged that you saw these reports?

22 A. No, sir, I have not acknowledged that.

23 Q. Doctor, is there another set of reports that you
24 saw?

1 A. Yes, there are.

2 Q. There are more than one report from Doctor Westmann
3 relating to these men?

4 A. I believe there are.

5 Q. Were they different, sir? Did they reach different
6 conclusions?

7 A. Well, I am not sure but I can tell you this, that
8 there is a report on Mr. Haning requested by the commission
9 and it sent to Mr. Vess, I believe, who is the office
10 director. Requested by the commission in 1951, sir.

11 Q. In 1951?

12 A. Yes.

13 Q. This is a report in 1955.

14 A. Yes, but they requested a report in 1951, sir.

15 Q. Doctor, I am talking about the reports that you
16 saw, sir. That we have no memo to suggest that you saw a
17 1951 report. I don't know anything about a 1951 report.
18 Doctor, we are talking about the memo that you reported that
19 you saw in 1955. We are talking about the report, the
20 testimony you gave at the commission in 1956, that refers to
21 these reports?

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

24 THE COURT: Yes, you may.

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

3 MR. HEINEMAN: This document, Your Honor, says we
4 discussed the findings. It doesn't say anything about him
5 seeing a report. Not one word in there about him seeing a
6 report. We discussed the findings. And I object to that as
7 misleading. In addition to that, as the Court well knows,
8 yesterday the statement about whether he saw reports was in
9 the question, not in his answer. His answer was based on his
10 examination. So that is an absolutely false and misleading
11 question and I object to it.

12 THE COURT: I think we went over that last one
13 yesterday. The objection was overruled then and it is
14 overruled now.

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

17 MR. CARR: Could you read the last question to the
18 witnesses?

19 (Court Reporter read back the last question.)

20 Q. I am not sure what the question is now so we will
21 restate it. We do recall testifying here yesterday that you
22 were asked the question at the commission hearing that
23 reported the fact that you had read Doctor Nestmann's
24 report. You do recall that, don't you, sir? The questioner

1 said to you, Doctor, you have read these reports of Doctor
2 Nestmann, did he not, sir, and asked you for an opinion and
3 you gave an opinion. Do you recall that, sir? On page 48 of
4 the hearing, Doctor. It starts at the bottom of page 47 and
5 continues on the top of the page 48?

6 A. Yes, I see it, sir.

7 Q. And, Doctor, the questioner said to you that you
8 had read these reports, did he not, sir?

9 A. Yes, sir.

10 Q. And, Doctor, you did not say at that time hold it,
11 I didn't read those reports, did you, sir?

12 A. I don't know if these are the same reports.

13 Q. Doctor, my question, sir, to you is, you did not
14 say hold it, I haven't read these Nestmann reports you are
15 referring to, did you, sir?

16 A. I certainly did not, sir.

17 Q. And, Doctor, if I were to tell you when I am asking
18 a question of you, Doctor, now from your reading of these
19 reports, what is your opinion, you would certainly say to me,
20 Mr. Carr, I didn't read any reports, if I suggested something
21 to you that wasn't true, wouldn't you, sir?

22 A. That is quite true, sir.

23 Q. And you have done it a number of times in which you
24 have thought that I am suggesting something that wasn't so,

1 isn't that correct, sir?

2 A. Well, I am not sure what you are saying there, sir.

3 Q. In this case I have posed questions to you assuming
4 certain facts and you have a number of times taken issue with
5 the assumption of certain facts, haven't you, sir?

6 A. I have indeed.

7 Q. And at this commission hearing the questioner also
8 gave you an assumption from certain facts from your reading
9 of the Nestmann reports, did he not, sir?

10 A. Correct, sir.

11 Q. And you did not take issue with that assumption
12 that you had read the Nestmann reports, did you, sir?

13 A. From reading this, I would say I did not, sir.

14 Q. Now, Doctor, you do know that reports were given to
15 the commission, don't you, sir?

16 A. I believe they were.

17 Q. From that question that was asked you, you do know
18 that Nestmann reports were given to the commission, don't
19 you, sir?

20 A. I believe they were, sir.

21 Q. So, you had knowledge of Nestmann reports. The
22 record there says you read the reports?

23 A. Correct.

24 Q. And you didn't deny having read them and these,

1 sir, as the record will show quite shortly are the reports
2 that were submitted, or reports like them that were reports
3 submitted to the commission. You know that too, don't you,
4 sir?

5 A. No, sir.

6 Q. Well, we will establish that what was given to the
7 commission shortly, Doctor. So, assuming for the moment,
8 sir, that you have read this report or one close to it, would
9 you please, sir?

10 A. Okay, I will.

11 Q. If you had indeed read that at that time, then you
12 knew what was said about these sexual erection problems, did
13 you not, sir?

14 A. I would have assumed, if that was the report, sir.

15 Q. Yes, Doctor.

16 A. If that was the report.

17 Q. If that was in a report that you read that had been
18 submitted to the commission, isn't that correct, sir?

19 A. Correct.

20 Q. And, Doctor, and you considered that these problems
21 with sexual erection of these men were either not unusual or
22 not connected with the dioxin exposure, isn't that correct,
23 sir, or you considered that it was connected with the dioxin
24 exposure and that it was unusual for this group of men to

1 have these kind of problems and you chose not to report it to
2 the world in your subsequent reports on this incident, isn't
3 that correct, sir?

4 A. No, sir, that is not correct.

5 Q. Which of those alternatives that I have given you
6 are untrue?

7 A. Sorry?

8 Q. Which of the alternatives that I have given you are
9 untrue?

10 A. All of them, sir.

11 Q. All of them are untrue?

12 A. Right. Because I am going by Doctor Nestmann's
13 statement, sir, Doctor Nestmann's findings, and Doctor
14 Nestmann found benign prostatic --

15 Q. My question is, which of these are untrue and I
16 think you have answered the question.

17 A. Benign prostatic hypertrophy which is a perfectly
18 good reason for not being able to have an erection and it is
19 right here in this record, sir.

20 Q. And, Doctor, what would cause that, sir?

21 A. Benign prostatic hypertrophy, it is common to men,
22 sir, and it has nothing to do with any chemical exposure,
23 sir.

24 Q. Doctor, what would cause it, sir?

1 A. Benign prostatic hypertrophy?
2 Q. Yes.
3 A. It is a common problem among men.
4 Q. Doctor, you said that. My question is, what would
5 cause it, sir?
6 A. I don't believe we know except age.
7 Q. All right, Doctor. You know that this group of men
8 all of whom said they had no problem sexually before the
9 explosion, correct, sir?
10 A. Correct.
11 Q. And a great number of them, if not all of them,
12 said they had problems with libido and/or getting an erection
13 after the explosion, correct, sir?
14 A. I am referring to Mr. Haning.
15 Q. Is that correct, sir?
16 A. In some of them that is true.
17 Q. Is that correct, sir?
18 A. Some of them, sir.
19 Q. Doctor, of the people that you saw, most of them
20 had problems with libido or sexual erection, did they not,
21 sir?
22 A. When did I see these people, sir?
23 Q. In '49, '50 and '53.
24 A. No, sir. In '49 and '50 they claimed that they did

1 and in '53 most of them said that they were able to perform
2 and my report verifies this. Do you want me to --

3 Q. Doctor, my question is, sir, that these men, most
4 of them claimed to you, told you at one time or another after
5 this exposure that they had problems with libido or erection,
6 did they not, sir?

7 A. No, sir.

8 Q. Doctor, haven't you put that down in your charts as
9 problems that are coming from this exposure after the
10 explosion? Didn't you put that down, sir?

11 A. We saw four men after the explosion, sir.

12 Q. Doctor, would you please answer my --

13 A. It is not explosion. It is a run away reaction.
14 There was no explosion.

15 Q. Would you please answer my question, sir?

16 A. Yes, we did, and that refers to the four people,
17 sir.

18 Q. Well, Doctor, whether it refers to four or 400, my
19 question to you, sir, on the men that you saw in '49 and '50
20 and '53, most of those men, if not all, said they had
21 problems with libido or sexual erection, did they not, sir?

22 A. No, sir.

23 Q. Well, how many said they had problems with libido,
24 sir?

1 A. Well, I haven't counted them, sir. I haven't
2 counted them. I only know that if you are talking about
3 early after the run away reaction --

4 Q. Doctor, my question to you is clear. It was after
5 this reaction, did not most of these men say they had
6 problems with libido or erection?

7 A. No, sir.

8 Q. Doctor, didn't you list that as one of the problems
9 in order of occurrence and prevalence, sir?

10 A. Yes, sir. That is as of the 1949-'50 examination.

11 Q. Doctor, did you understand that I am talking about
12 that, sir?

13 A. I sure did, sir. Yes, sir.

14 Q. How many of those men at that time had these
15 problems, sir?

16 A. Well, I haven't counted them among the four but I
17 imagine that a fair number among the four claim that, sir.

18 Q. Doctor, according to your table, even as late as
19 1953 on page 5 of Exhibit 1701, 13 of these people had loss
20 or decrease of libido even as late as '53, isn't that
21 correct, sir?

22 A. I don't know what you are referring to, sir, and I
23 would like to see it.

24 Q. I told you what I am referring to, Doctor. I am

1 referring to your 1953 report.

2 A. What page, sir?

3 Q. Page 5, sir. Do you see that, sir?

4 A. Yes, sir, and it doesn't say anything about failure
5 to perform, sir.

6 Q. Please just answer my question, if you don't mind,
7 sir, without throwing in extraneous matters. I know you are
8 smiling as if you are amused by my consternation but it does
9 concern me that you will not respond to my questions.
10 Doctor, doesn't it say that this is the fourth most prevalent
11 disorder outside of the chloracne for these men, is it not,
12 sir? This loss or decrease of libido, sir?

13 A. No, sir. It is the sixth, not the fourth. Sixth
14 most prevalent.

15 Q. Doctor, how many how many persons had aches and
16 pain problems in your report?

17 A. Well, it is listed as number six, sir.

18 Q. Doctor, how many people had aches and pain problems
19 in your report?

20 A. 27.

21 Q. How many had fatigue?

22 A. They complained about -- They complain, not --

23 Q. Doctor, how many had clinical symptoms according to
24 this chart, sir, clinical symptoms? How many had clinical

1 symptoms of fatigue, sir?

2 A. 21.

3 Q. How many had clinical symptoms of aches and pains,
4 sir?

5 A. 27.

6 Q. How many had clinical symptoms of nervousness and
7 irritability, sir?

8 A. 17.

9 Q. How many had clinical symptoms of loss or decrease
10 of libido, sir?

11 A. 13.

12 Q. Now, in what order is -- are there any more than
13 that, sir, are any number of subjects more than that other
14 than chloracne with these clinical symptoms, sir?

15 A. That would be the fifth.

16 Q. That is what I said.

17 A. No, you said the fourth.

18 Q. Doctor, if you listened to me, I said fourth
19 outside of chloracne which they all had except for one, Mr.
20 Kyle. Do you recall that, sir?

21 A. As corrected, that is correct.

22 Q. Doctor, this is the fourth most non cutaneous
23 symptom, is it not, sir?

24 A. In numbers claiming they have it, sir.

1 Q. How else can you look at it, sir? This is a
2 clinical symptom that you have reported, not as claim they
3 had it. You have described it here as a clinical symptom,
4 have you not, sir?

5 A. We are talking about and we are going back --

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

8 THE COURT: Doctor, just answer the question that
9 is asked of you. No more, no less.

10 A. Would you ask the question again, sir?

11 Q. Doctor, you described this as clinical symptoms,
12 did you not, sir?

13 A. That is the subject title, sir, yes.

14 Q. Is that a yes to my question, sir? You have
15 described it as clinical symptoms?

16 A. Yes, we did.

17 Q. And, Doctor, this is in more than one-third of your
18 36 had clinical symptoms of loss or decrease of libido, isn't
19 that correct, sir?

20 A. Yes, sir.

21 Q. Now, Doctor, do you consider that in men of this
22 age, and they range from their 30s to their 50s at the time
23 of this examination in '53, do you think that that is a
24 common occurrence, one-third of the male population would

1 have loss of libido? Doctor, is that something you would
2 expect in one-third of the cross section of the male adult
3 population?

4 A. If this is accurate for that time, sir, if there is
5 accurate for that time, that might be considered unusual but
6 these are --

7 Q. Doctor, my question is, would this be unusual for
8 one-third of the cross section of a male population to have
9 clinical symptoms of loss of libido?

10 A. If it were really so, sir.

11 Q. Really so what? That it would be strange and
12 unusual, wouldn't it, sir?

13 A. If they really had -- if they really had at the
14 time we examined them, not previously, not previously, but at
15 the time we examined them, they had loss of libido or
16 decrease and we don't say, we said loss or decrease in
17 libido. These are claims that -- these are complaints which
18 we regarded as clinical symptoms.

19 Q. Yes, Doctor. You described them as symptoms,
20 clinical symptoms, didn't you, sir?

21 A. Right, sir. And they are clinical complaints,
22 sir. The same thing.

23 Q. But we are going back to the question of were these
24 men lying or telling the truth?

1 A. I believe they were telling the truth, now.

2 Q. Thank you, Doctor. Now, you have answered that

3 question.

4 A. Okay.

5 Q. And let me pass on to something else.

6 A. Very good.

7 Q. Now, you believe they were telling the truth?

8 A. I believe they were telling the truth.

9 Q. And, therefore, you believe that one-third of these

10 men had this problem associated with or dating from or that

11 occurred at one time or another after this explosion, isn't

12 that correct, sir?

13 A. After the run away reaction, one-third.

14 Q. After the run away reaction, isn't that correct,

15 sir?

16 A. One-third of them claimed that they had this, sir.

17 Q. You use the word claim again and I have suggested

18 to you that you believe they were telling the truth?

19 A. I do.

20 Q. And you said they were and you described it as

21 clinical symptoms, sir, and now you are using the word claim

22 as if somehow you are casting doubt on what they said to you,

23 aren't you, sir?

24 A. No, I am not.

1 Q. All right, Doctor. Then use the words that I am
2 using.

3 A. They are subjective, sir.

4 Q. Doctor, do you mind, sir? Use the words that I am
5 using in the question. Now, if you don't agree with the
6 question or the assumption of the question, please say so.
7 But, Doctor, at this time, you found clinical symptoms of
8 loss or decrease of libido dating from the 1949 incident in
9 over one-third of the population you looked at, did you not,
10 sir?

11 A. That is what the report indicates, sir.

12 Q. Is that a yes to my question, Doctor?

13 A. Yes.

14 Q. And, Doctor, you have also said this is an unusual
15 occurrence in this percentage of population, did you not,
16 sir, if it were true?

17 A. If it were true.

18 Q. And, Doctor, you took it as true at face value, did
19 you not, sir?

20 A. We believe the men were telling the truth, sir.

21 Q. Is that a yes to my question, Doctor?

22 A. Yes, sir.

23 Q. And, Doctor, you took that at face value and you
24 have these 1955 reports, sir, which describe in practically

1 all of the people, either the loss of libido or the problems
2 with erection, correct, sir?

3 A. 1955?

4 Q. 1955, Nestmann reports that we are going through,
5 Doctor, isn't that correct, sir?

6 A. I haven't gone through all of them so I can't tell
7 you, sir.

8 Q. The ones we have gone through thus far, Doctor?

9 A. I find it only in two of the reports that I have
10 read so far, sir, and only in Mr. Haning's case is it listed
11 as a chief complaint and in the other instance it is not
12 listed as chief complaints but mentioned elsewhere, sir.

13 Q. Doctor, if you would look on Mr. Cunningham under
14 the section chief complaints, you will find it listed there,
15 will you not, sir?

16 A. That is right.

17 Q. So, it is a chief complaint for Cunningham?

18 A. And Haning and that is all, sir.

19 Q. Isn't that right, sir?

20 A. Only two of them.

21 Q. The two that had the complaints out of the, what,
22 five that we looked at?

23 A. I haven't counted them, sir.

24 Q. Yes. Out of the five that we have looked at, sir,

1 two of these five had it as chief complaints, did they not,
2 sir?

3 A. According to Doctor Nestmann.

4 Q. Now, Doctor, that is two out of five is thus far 40
5 percent, isn't it, sir?

6 A. It is, for this could be a very biased population,
7 sir.

8 Q. Doctor --

9 A. If you are thinking about epidemiology, this is not
10 an epidemiologic study, sir.

11 MR. CARR: Would you direct the witness to just
12 answer my question?

13 THE COURT: Doctor, again listen to the question,
14 wait until the question is finished, respond to the question
15 only, no more, no less. Your response this last time was in
16 no way responsive to the question that was asked of you.
17 Now, listen to the question, let the question be finished and
18 then respond to that question. No more, no less.

19 Q. Doctor, thus far it is two out of five have these
20 problems, correct, sir?

21 A. In this group, sir, yes.

22 Q. And a third had the problems in the group that you
23 saw. Over a third had the problems in the group that you
24 saw, correct, sir?

1 A. They complained about it in the past, sir.

2 Q. Could you answer my question, sir --

3 A. Yes.

4 Q. -- in the way that I gave it to you?

5 A. Yes.

6 Q. Over a third of them had the problem, did they not,

7 sir?

8 A. They did.

9 Q. Yes. And, Doctor, in nowhere -- and if you want

10 to, you can refer to 1751 -- nowhere did you mention these

11 continuing problems of libido, did you, sir, or sexual

12 erection?

13 A. No, sir.

14 Q. And, Doctor, we went through the 1979 reports, did

15 we not, sir?

16 A. Correct.

17 Q. And there were continued complaints there, correct,

18 sir?

19 A. There were some.

20 Q. Dated from the explosion or incident, correct, sir?

21 A. Not continuously but there were problems among the

22 unexposed as well as the exposed, sir.

23 Q. Now, Doctor, you have added a new element to your

24 answer, haven't you, sir?

1 A. No, I haven't.

2 Q. I didn't ask you about the unexposed, did I, sir?

3 I asked you about these men that we are talking about in
4 1979, did I not, sir, that we have discussed here, that we
5 went through their reports, sir?

6 MR. HEINEMAN: Objection. I don't think the
7 question was so limited, sir.

8 THE COURT: Objection is overruled.

9 A. I am not sure I understand the question, sir.

10 Q. Doctor, do you understand that we have been talking
11 about this group of people that you have examined in '49,
12 '50, '53 and now this 11 that we have continued to discuss
13 that you saw in '79 of your original group. Do you
14 understand that, sir?

15 A. If that is the question, what is the question,
16 though?

17 Q. My question is, do you understand that that is the
18 group we have been talking about and about which my questions
19 are referring to, sir?

20 A. You are referring to the group of 11, are you?

21 Q. Doctor, you know what we are referring to.

22 A. Well, no.

23 Q. Did I ask you anything about an unexposed group,
24 Doctor Suskind?

1 A. You are referring --

2 Q. Doctor, did I ask you anything about an unexposed

3 group?

4 A. You asked me about my 1979 study.

5 Q. Did I ask you something about an unexposed group?

6 A. No, sir.

7 Q. And, Doctor, insofar as exposure and unexposure is

8 concerned, the people that work in that plant because of the

9 way the material is spread out, you can't -- well, Doctor

10 Roush has said that there is no such person as unexposed at

11 the plant?

12 MR. HEINEMAN: Objection, Your Honor, may counsel

13 approach the bench?

14 A. I don't believe it --

15 THE COURT: Yes, you may. Doctor, when an

16 objection is made by either party, please stop speaking. I

17 have to rule on the objection before we can go forward.

18 (Bench conference had out of the hearing of the

19 jury.)

20 MR. HEINEMAN: That is a totally misstatement of

21 what Doctor Roush said. He said theoretically. Mr. Carr was

22 asking him to make assumptions and he said theoretically

23 there could be exposure of the people and it wasn't -- he

24 didn't state that everybody in the plant was exposed. Doctor

1 Roush didn't say that.

2 MR. CARR: He said anybody that walks through that
3 plant would be considered to be exposed.

4 MR. HEINEMAN: Theoretically exposed.

5 THE COURT: I remember that and I think your
6 objection is not well taken so it is overruled. I remember
7 that exchange. It was a long one and I think that what Mr.
8 Carr stated is not misstating what the conclusions of that
9 exchange were. Overruled. While we are up here, what is the
10 status on that discovery?

11 MR. CARR: They have delivered it. That is the
12 reason for the lateness. They delivered it at 9:35.

13 MR. HEINEMAN: He wasn't at the office at seven
14 o'clock last night.

15 MR. CARR: At 9:35 a bunch of material, some of
16 which I have been able to go through. I don't know if it is
17 the other or not but it is material that I haven't been given
18 before and happy to have.

19 THE COURT: Okay. Have you called -- are you
20 checking on St. Louis and West Virginia?

21 MR. HEINEMAN: Yeah.

22 THE COURT: Okay. Fine.

23 (The following proceedings were had in the hearing
24 and presence of the jury).

1 Q. Doctor, who has the greater knowledge about the
2 working conditions in the various Monsanto plants including
3 Nitro? You or Doctor Roush?

4 A. Insofar as the Nitro Plant is concerned, I do, sir.

5 Q. You do, sir?

6 A. Yes, sir.

7 Q. And you believe, then, that Doctor Roush -- well,
8 assume that Doctor Roush said that going through the plant
9 would cause one to be exposed to TCDD, you believe that is
10 untrue, sir?

11 MR. HEINEMAN: May my objection to that be
12 continuing, Your Honor?

13 THE COURT: It is so continued.

14 A. In my view, knowing the plant since 1949, sir, I
15 would consider that as inaccurate.

16 Q. You believe that is not true, sir?

17 A. That is inaccurate, sir.

18 Q. Do you know the various places that they have found
19 TCDD contaminated soil at Nitro?

20 A. I do indeed.

21 Q. And it is more than just one place, isn't it, sir?

22 A. It might be, sir.

23 Q. No, Doctor, not might be. You know that it is just
24 more than one place, don't you, sir?

1 A. No, sir.

2 Q. How many places did they find TCDD?

3 A. I don't know what you are talking about, sir.

4 Q. Well, Doctor, I thought you said you did?

5 A. Well, I have to know specifically what you are

6 referring to.

7 Q. Doctor, either you know it or you don't know it.

8 Do you know that they found TCDD in the soil at the Nitro

9 Plant?

10 A. I only know of one instance where they looked for

11 it, sir.

12 Q. My question, sir, do you know that they found it,

13 sir?

14 A. Yes. Deep in the soil, not at the surface, sir.

15 Q. Doctor, you do know that they found it, sir?

16 A. They found it deep in the soil, yes.

17 Q. Doctor, the question is when you said a moment ago

18 you don't know anything about it, you weren't telling us the

19 truth then, were you?

20 A. I didn't say that. Not with respect --

21 Q. Didn't you say you didn't know anything about it?

22 A. No, sir. I said I didn't know what you were

23 referring to with respect to --

24 Q. Doctor, you said more than that but we will pass

1 from that. You do know indeed that they found TCDD in the
2 soil at Nitro, don't you, sir?

3 A. If you are referring to the EPA --

4 MR. CARR: Would you direct the witness to answer my
5 question.

6 THE COURT: Just answer the question directly.

7 A. Yes, sir.

8 Q. You also know that at least four buildings at Nitro
9 were involved with handling 2,4,5-T, don't you, sir?

10 A. I believe there were three for 2,4,5-T itself, sir.

11 Q. Doctor, would you name the buildings, sir, if you
12 can remember them?

13 A. Yes, I do.

14 Q. Well, would you give us the numbers?

15 A. Building 34.

16 Q. Yes.

17 A. 51.

18 Q. Yes.

19 A. And 92.

20 Q. What about 41?

21 A. 41 made trichlorophenol. It didn't make 2,4,5-T.

22 It was used in the making of 2,4,5-T.

23 Q. Doctor, the trichlorophenol has got the TCDD in it,
24 has it not?

1 A. Yes, sir?

2 A. And it could have it, yes.

3 Q. And, Doctor, what other buildings are involved that
4 could have TCDD involved in it? Did you name 79 where they
5 ship it from? Did you name 92, sir?

6 A. I did name 92, sir.

7 Q. Did you name 34, 41?

8 A. I did name 34. May I repeat what I said? I said
9 51 where they made 2,4,5-T, 34 and 92 where they made both
10 trichlorophenol and 2,4,5-T. And earlier in '49 to '51,
11 intermittently, they made trichlorophenol in building 41
12 among other things.

13 Q. Yes. And what about building 79 from where they
14 shipped it from? Do you know anything about that?

15 A. No, sir.

16 Q. Doctor, do you know how it got from where they
17 manufactured it to the place where they shipped it?

18 A. They probably hauled it.

19 Q. Yes, Doctor. And they hauled it through the plant,
20 didn't they, sir? Through the open area in the plant, didn't
21 they, sir?

22 A. It doesn't mean that it contaminated the plant,
23 sir.

24 Q. Could you answer my question please, sir?

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:

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CROSS EXAMINATION

By

MR. REX CARR.

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

MR. HEINEMAN: Counsel approach the bench?

THE COURT: Sure.

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

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, reproving 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

1 position that this witness has taken?

2 MR. NASSIF: We haven't made a comparison, Your
3 Honor, of all the data we have given Mr. Carr and where it
4 would be located on this last page here to tell you if this
5 wasn't one of the samples applicable to this location and it
6 has not been covered.

7 MR. CARR: And has the witness done it.

8 MR. NASSIF: I don't know, Mr. Carr.

9 MR. CARR: You know good and well he hasn't.

10 MR. NASSIF: Mr. Carr, he knows a lot more than I
11 do.

12 THE COURT: I will allow you to make the
13 appropriate assumption as to covering the areas sufficiently
14 so we can move on because right now we are at a road block on
15 a tangent.

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

18 Q. Doctor, I want you to assume that the only areas of
19 contamination in the soil that were found were as I described
20 to you in the question that I read to you from Plaintiffs'
21 Exhibit 1527. Will you do that, sir?

22 A. What areas is that, now? What areas?

23 Q. The one that I read to you, Doctor?

24 A. Is that just the parking lot, sir?

1 Q. No, Doctor. There were other areas in addition to
2 the parking lot. Do you recall that, sir?

3 A. Yes, I do.

4 Q. Doctor, I would like for you to assume that those
5 areas were all the areas of contamination you found. Will
6 you assume that, sir?

7 A. I assume that.

8 Q. And in all of those areas, those areas were covered
9 up, weren't they, sir?

10 A. I don't know.

11 Q. Doctor, do you recall I read to you that they were
12 all covered up? The very least that was done was that six
13 inches of limestone put over an area?

14 A. Has that been done or is that just a proposal?

15 Q. Doctor, I am not here to answer the question,
16 Doctor. Would you just please assume these things, Doctor,
17 so that we can move on?

18 A. I assume that that was done, sir.

19 Q. Yes.

20 A. Okay.

21 Q. And that there is no contaminated area of which we
22 are aware where there was not some remedial action taken as
23 is described in this Plaintiffs' exhibit 1527?

24 A. Okay. I assume that.

1 Q. Will you assume that?

2 A. Yes.

3 Q. If you assume that is true, Doctor, then they took

4 action because somebody believed that that soil was

5 bioavailable or that TCDD in that soil was available, isn't

6 that correct, sir?

7 A. No, not necessarily, sir.

8 Q. Not necessarily, Doctor. Why would they take the

9 action unless they believed that there was some risk, Doctor?

10 A. I think it would be prudent, even though the

11 contamination might be at a low level at six inches or 12

12 inches or 18 inches below the soil, it might be very prudent

13 to have another cover over it.

14 Q. And, Doctor, why would it be prudent to do that?

15 A. Because at some time or other, the material might

16 be dug up.

17 Q. Well, Doctor, there are other methods for the TCDD

18 that is buried in the soil to get up into the atmosphere

19 other than just being dug up. You know that, don't you, sir?

20 A. I believe I know some of them at least.

21 Q. You know that it rises to the surface when it is

22 buried? You know that, don't you, sir?

23 A. No.

24 Q. You don't know the work that Doctors Freeman and

1 Schroy did in behalf of Monsanto?

2 A. Yes, I do, sir.

3 Q. How the dioxin, even though it is buried 20 inches
4 deep, comes up to the surface?

5 A. Yeah, but it does so have --

6 Q. Doctor, excuse me. You say you didn't know and now
7 you say you do know?

8 A. I read Schroy and Freeman's paper, yes.

9 Q. And do you know that there is a method of the
10 dioxin to get to the surface other than just being dug up,
11 don't you, sir?

12 A. They had only --

13 Q. Excuse me, Doctor. Do you know that or not?

14 A. -- a method.

15 Q. That there are other ways by which TCDD buried in
16 the soil can rise to the surface of the soil other than being
17 dug up?

18 A. Theoretical possibilities, sir. Yes.

19 Q. Theoretical possibilities?

20 A. Yes.

21 Q. Don't you believe that Doctor Freeman and Schroy
22 proved it, sir?

23 A. Only to a degree, sir.

24 Q. Doctor, did they prove it or not, sir?

1 A. No. To my way of evaluating their effort.

2 Q. Doctor, you are saying that they did?

3 A. There is nothing absolute about that, sir.

4 Q. Doctor, you are saying they didn't prove it, is

5 that right?

6 A. They didn't prove it conclusively, no, sir.

7 Q. Doctor, did they have an experiment that they had

8 published and they said -- no one has yet contradicted it,

9 sir -- that it does rise to the surface?

10 A. They even --

11 Q. Are you aware of that, Doctor?

12 A. Yes, I am aware of it. I am aware of that paper.

13 Q. Have you done any work yourself, sir?

14 A. No, I haven't.

15 Q. To disprove what they said was a proven fact

16 according to their tests that they performed?

17 A. I have not done that kind of work, sir.

18 Q. Doctor, they did show a graph, did they not, sir,

19 that showed the TCDD moving upward?

20 A. I believe they have showed it moving. I am not

21 sure whether it was upward or not, sir.

22 Q. Aren't you aware of the fact that they showed it

23 moves downward and upward, both directions from where it was

24 buried?

1 A. It may under certain circumstances.

2 Q. That isn't what I asked you. Aren't you aware of
3 the fact this they proved it, sir?

4 A. No, sir. They haven't proved it to my
5 satisfaction, sir.

6 Q. I would like for you to assume, however, whether it
7 is to your satisfaction or not that it has been proven. That
8 TCDD will vaporize and volatilize and rise to the surface.
9 Will you assume that please, sir?

10 A. Only if you ask me.

11 Q. What do you think I am doing, Doctor?

12 A. Asking me.

13 Q. So will you assume it, sir?

14 A. I will assume it, sir.

15 Q. And, Doctor, one reason to cover the soil, sir, is
16 to prevent the vaporization, the volatilization of the TCDD
17 from rising into the atmosphere, isn't that correct, sir?

18 A. No, sir. It is not so, sir. Absolutely not.

19 Q. Doctor, why do you think they put the cap of clay
20 over the TCDD contaminated soil and the asphalt and the
21 concrete?

22 A. So that the soil beneath would not be available.

23 Q. Doctor, the TCDD is what they are concerned about,
24 isn't it, sir?

1 A. Correct.

2 Q. Not the soil per se?

3 A. Whatever is in the soil and TCDD may be found 18
4 inches or 20 inches. What they wanted to make sure is that
5 nobody got to it.

6 Q. Doctor, now -- I am not even asking you that, am I,
7 Doctor?

8 A. Yes, you are.

9 Q. Doctor, do you know that the Monsanto Task Force
10 Group that was concerned with Sturgeon considered that the
11 only way of really disposing of the contamination at Sturgeon
12 was to put asphalt over the contaminated areas?

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

15 THE COURT: Yes, you may.

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

18 MR. HEINEMAN: My recollection of the document
19 which Mr. Carr is referring to is that the document said that
20 they should do that perhaps to deal with the smell. I have
21 been informed by my boss here that the document title is Odor
22 At Sturgeon. At any rate, my recollection is is that the
23 exhibit that Mr. Carr is referring to proposes that you deal
24 with odor, not deal with TCDD contamination. I object to the

1 form of the question as being misleading to the witness and
2 not correctly representing the facts that have been
3 introduced in the case.

4 MR. CARR: Your Honor, I will agree that the topic
5 was the odor and that was what they considered a solution at
6 least in part to the problem called odor but the document
7 itself dealt with more than just odor. It wasn't limited
8 just to odor. It talked about the Sturgeon problem. In
9 addition, of course, we have the OH remedy which counsel --
10 Mr. Heineman wasn't here but Mr. Musgrave proved extensively
11 as to how they put this impermeable cap of clay over dioxin
12 and there will be other questions that I will get into
13 similar where they have discussed problems in other areas of
14 capping them with asphalt.

15 THE COURT: Objection is overruled. Let's take a
16 break at this time.

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

19 THE COURT: Ladies and gentlemen, we will take a
20 short recess at this time and then resume testimony. The
21 admonishments that I gave you earlier will apply during this
22 break also. Court is in recess.

23 COURT RECESSED:

24 (The following proceedings were had in the hearing

1 and presence of the jury)

2 RAYMOND SUSKIND

3 having resumed the witness stand, being previously sworn,
4 testified further as follows:

5 CROSS EXAMINATION

6 By

7 MR. REX CARR.

8 Q. Doctor Suskind, I misstated to you the purpose of
9 the contemplated paving over Sturgeon or part of Sturgeon
10 with asphalt and I would like to correct any misapprehension
11 there might be in your mind. The stated purpose by the
12 Monsanto representatives for the, at least in this exhibit
13 putting the asphalt over the contaminated area in Sturgeon
14 was for the purpose of doing something about the odor problem
15 connected with the spillage and I would like for you to
16 disregard that I stated to you it was for the purpose of
17 containing the TCDD because they did not have that in mind at
18 least at the time, all right?

19 A. Yes, sir.

20 Q. But you do know, Doctor, do you not, in regard to
21 steps that have been proposed for contaminated sites such as
22 Times Beach or Minker Stout in Missouri, that paving over the
23 contaminated areas are possible solutions that have been
24 recommended by some scientists?

1 A. They have been recommended by some persons, yes.

2 Q. All right. And, Doctor, regardless of your views
3 as to whether or not you believe Schroy and Freeman's work
4 has proven the volatility or the vaporization of TCDD from
5 the soil, you are aware of the fact that that is Monsanto's
6 position, are you not, sir?

7 A. No, I am not aware of that, sir.

8 Q. Well, that is what their scientists have said, sir,
9 in this courtroom under oath will happen to the TCDD. Will
10 you accept that, sir?

11 A. No, not really.

12 Q. Doctor, I am asking you to accept that because that
13 is what they have testified to. Will you accept that, sir?

14 A. I can only accept that they testified that.

15 Q. Yes. That is what I am asking you to do.

16 A. All right.

17 Q. Now, Doctor, you have a difference of opinion with
18 Monsanto, I take it, as to whether or not the workers at the
19 Nitro Plant were or were not exposed to TCDD by reason of
20 where they worked in the plant or where they walked through
21 the plant or what they did in the plant or various areas of
22 the plant, is that correct, sir?

23 A. Our view of --

24 Q. Excuse me, Doctor. Could you answer that

1 question? I am asking you whether or not you had a
2 difference of opinion with Monsanto as to what constitutes
3 exposure to a worker by reason of them being in a part of the
4 plant or being in an area or walking through the plant. Do
5 you differ, sir?

6 A. Yes, we have some differences, yes.

7 Q. And at the time you did your studies, sir, you were
8 given information by Monsanto as to the persons that they
9 considered to be exposed, were you not, sir?

10 A. Yes, sir.

11 Q. And you were given classifications of people that
12 were exposed intermittently by reason of the fact that they
13 had plant-wide responsibilities, did you not, sir? You were
14 given such a list?

15 A. Yes, we were given such a list.

16 Q. And you didn't go by that list in deciding who
17 would be an exposed group or unexposed group, did you, sir?

18 A. That is true, sir.

19 Q. Yes. And, Doctor, back to the question that
20 started us down this path. At sometime ago, the libido and
21 sexual impotence and sexual problems that these men had
22 existed in both the exposed and the unexposed groups, did
23 they not, sir?

24 A. I believe so, yes.

1 Q. And, Doctor, do you believe that the fact that it
2 occurs in a so-called unexposed person might suggest or
3 indicate that he was exposed if you have found complaints of
4 loss of libido to exist in a third or better of the so-called
5 exposed population?

6 A. Well, I will answer your first question by saying
7 no, we don't think that the fact that they were found in the
8 unexposed had anything to do with exposure and I think we
9 stated in our paper, sir.

10 Q. All right, Doctor. Then if you found that loss of
11 libido was a relatively common problem occurring in, say, 30
12 percent of your exposed population regardless of their age,
13 you wouldn't take that to be, then, as a pretty strong
14 indication that dioxin affects the libido?

15 A. No, sir.

16 Q. You would not?

17 A. No, sir. Not in 1979, sir.

18 Q. And, Doctor, would you -- I take it then that you
19 wouldn't say that the libido, loss of libido occurring in the
20 so-called unexposed population would not support a view that
21 the unexposed population were, in fact, exposed? Is that
22 also correct?

23 A. Absolutely not. We would not agree to that.

24 Q. Doctor, back to the Nestmann problem. The Nestmann

1 exhibit that we were discussing, on this particular one
2 Haning, as well as -- Haning was found by Doctor Nestmann to
3 have a moderately severe psychoneurosis, was he not, sir? Do
4 you have the Exhibit 1779 in front of you, Doctor?

5 A. Yes, I do.

6 Q. And, Doctor, I think you have testified earlier
7 that you were aware that these reports by Doctor Nestmann
8 were given to the compensation commission?

9 A. I believe so, yes.

10 Q. Doctor, handing you Plaintiffs' Exhibit 1780 and
11 ask if that represents to you that that is a portion of the
12 compensation commission transcript dealing with Harold Young
13 and, Your Honor, I would like to offer that exhibit into
14 evidence at this time.

15 THE COURT: Any objections?

16 MR. HEINEMAN: One moment please, Your Honor.

17 THE COURT: Sure.

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

20 THE COURT: Sure.

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

23 MR. HEINEMAN: This exhibit, which is what number?

24 THE COURT: 1780.

1 MR. HEINEMAN: Your Honor, I thought Mr. Carr said
2 it was a transcript. What I have is definitely not a
3 transcript.

4 MR. CARR: Right. I agree. It is part of the
5 record. I misspoke. It is part of the compensation record.

6 MR. HEINEMAN: All right. Your Honor, at this
7 point we would object to their document as being hearsay and
8 as having no authentication or identification by this
9 witness, no foundation has been laid by the witness in court
10 with respect to allowing it to be admitted into evidence. It
11 is not a document created by -- well, I have said what I need
12 to say.

13 MR. CARR: Your Honor, the status of this record is
14 the same as many other Monsanto records that we have
15 heretofore offered. These are documents that were produced
16 to us by Monsanto from their files dealing with the subject
17 of dioxin and dealing with these people. There has been a
18 considerable issue made of the compensation commission
19 hearing and records thereof and these documents are
20 authenticated and Monsanto has represented to us that they
21 are authentic.

22 THE COURT: I think they probably fall under that
23 status. I think also since it is part of the record of an
24 official tribunal, I can take judicial notice of it, too, and

1 I would do that also since I don't think there is any dispute
2 that it is part of the record of the Workmen's Compensation
3 Board of West Virginia at the time, the way it was
4 constituted in the '50s. On both things I will deny it.

5 I think you should correct for the jury that this
6 part of the record was not a transcript.

7 MR. HEINEMAN: Am I, in terms of the future rulings
8 of the court, am I to understand that anything that is an
9 official record of the Workers Compensation Commission will
10 be admitted under judicial notice of this court?

11 THE COURT: Assuming that it is relevant, it could
12 be.

13 MR. HEINEMAN: All right.

14 THE COURT: I would think so, assuming that it is
15 relevant.

16 MR. HEINEMAN: All right.

17 THE COURT: Now, you know, I mean, as the question
18 of relevancy or any other objection that I can't think of
19 right now. If it is raised then, I will consider it but I
20 would think as a general rule, that is true.

21 MR. HEINEMAN: But the record of the court or the
22 commission would be judicially noticed. All right.

23 (The following proceedings were had in the hearing
24 and presence of the jury).

1 Q. Doctor, I described this as a transcript. In fact
2 it is not a transcript. It is a portion of the records on
3 file with the West Virginia Industrial Commission, is it not,
4 sir, and not a transcript of testimony? At least the part
5 that we have here contains no testimony, isn't that correct,
6 sir?

7 A. Well, all I see are letters to the commission, sir,
8 and I see a cover sheet.

9 Q. My question, Doctor, it does not contain any
10 testimony, does it, sir?

11 A. But the cover sheet indicates, so --

12 Q. It is not a transcript of testimony, is it, sir?

13 A. All but the first sheet, sir.

14 Q. The first sheet is simply an index, Doctor. It is
15 not a transcript, isn't that correct, sir?

16 A. But I am not sure what it is an index of, sir.

17 Q. All right, Doctor. And also show you Plaintiffs'
18 Exhibit 1780A and ask you to confirm that that is a part of
19 1780 and it has on the top of it Employer Exhibit Number 1
20 and it is a report signed by Doctor Nestmann, is it not, sir?

21 A. Yes, it is a report signed by Doctor Nestmann.

22 MR. CARR: Your Honor, I would like to pass that
23 report to the jurors, if I might.

24 A. Sir, is there a date?

1 THE COURT: Go ahead, Mr. Carr.
2 (Plaintiffs' Exhibit 1780A is passed to the jury).
3 Q. Doctor, the date you can see there is July 6, 1955?
4 A. Thank you, sir.
5 Q. Doctor, this particular exhibit has a number of
6 statements about Harold Young, does it not?
7 A. Which statement?
8 Q. The 1780A that I have passed to you, sir?
9 A. 1780A is the findings of Doctor Nestmann, sir, yes.
10 Q. And could I have a 1780B. Doctor, 1780B is a
11 blowup of the second page or signature page of the Nestmann
12 report, is it not, sir?
13 A. Yes, I believe it is.
14 MR. CARR: Your Honor, I would offer 1780B into
15 evidence at this time.
16 THE COURT: All right.
17 MR. HEINEMAN: It is already admitted.
18 MR. CARR: The blowup has not been, counsel.
19 THE COURT: It is part of 1780.
20 MR. HEINEMAN: Well, may the record we have made in
21 connection with 1780 apply?
22 THE COURT: Sure.
23 MR. HEINEMAN: To 1780A and B as well, Your Honor?
24 THE COURT: Right. It so applies.

1 Q. Doctor, is there in that Nestmann report any
2 diagnosis of Doctor Nestmann that Mr. Young has a case of
3 severe psychoneurosis?

4 A. No. But there is no diagnosis or impression here,
5 sir.

6 Q. Doctor, could you answer my question, please, sir?

7 A. No.

8 Q. And, Doctor, this particular sheet is not on Doctor
9 Nestmann's stationary, is it? It appears to be progress
10 notes, something like you would use in a hospital record,
11 sir?

12 A. I can't say from the way this is.

13 Q. Doctor, you see there is no letterhead, do you not,
14 sir?

15 A. Yes. But I can't assume that it is hospital
16 records, sir.

17 Q. May I just give the question to you one more time
18 Doctor. It is not, it does not have Doctor Nestmann's
19 letterhead on it, does it, sir?

20 A. I don't see Doctor Nestmann's letterhead, sir.

21 Q. It has the words progress notes and then over to
22 the left it has got hospital number, does it not, sir, and
23 then room or ward? Do you see that, sir, and then a place
24 for the doctor?

1 A. It is illegible so I can't really verify that.

2 Q. You can't make out the abbreviation hospital number
3 and the doctor and the bed and the room or ward?

4 A. No, I can't but I will accept that, sir.

5 Q. Thank you, Doctor. And, Doctor, do you recall I
6 asked you, suggested to you I think it was yesterday that
7 perhaps the reports that were given to the Workmen's Comp
8 Commission had been edited so as to remove certain diagnoses
9 concluding or referring to the psychoneurosis and you said
10 no, that could not be. Do you recall that?

11 A. I believe I recall that vividly, sir.

12 Q. Yes, you do, Doctor. I hand you now what has been
13 marked as Plaintiffs' Exhibit 1781 and I will represent to
14 you, sir, that these are hospital records furnished to us by
15 Monsanto relating to Harold Young as per our request a couple
16 of weeks ago and, Your Honor, I will offer 1781 into evidence
17 in just a minute.

18 THE COURT: Any objection?

19 MR. HEINEMAN: One moment, Your Honor.

20 THE COURT: Sure. Go ahead.

21 MR. HEINEMAN: Would counsel approach the bench,
22 please?

23 THE COURT: Sure.

24 (Bench conference had out of the hearing of the

1 jury.)

2 MR. HEINEMAN: Your Honor, we will object to this
3 on the same grounds that we have objected before to these
4 outside medical record. A, they are hearsay. B, there has
5 been no authentication, no identification, therefore, no
6 foundation.

7 THE COURT: I will incorporate your argument on
8 both sides and the ruling is the same. They are admitted
9 over objection. I will incorporate your arguments and yours
10 at this time.

11 MR. CARR: Thank you.

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

14 Q. Doctor, I will now hand you what has been marked
15 Plaintiffs' Exhibit 1781 and ask you to confirm that this is
16 a copy of the progress notes signed by Doctor Nestmann that
17 is in the exhibit 1780 that I previously had given you?
18 1781, sir. We are now looking at 1781, sir.

19 MR. HEINEMAN: What is the number of the new
20 exhibit?

21 MR. CARR: 1781A which is the progress notes signed
22 by Doctor Nestmann that is part of exhibit 1781 which are the
23 hospital records relating to Harold Young and, Your Honor, I
24 would like to pass that report of Doctor Nestmann's to the

1 jury as well.

2 THE COURT: Fine.

3 MR. CARR: Have I given the Court a copy of that?

4 THE COURT: No, I don't have it.

5 MR. HEINEMAN: Has the witness identified it?

6 (Plaintiffs' Exhibit 1781A is passed to the jury).

7 Q. Doctor, the exhibit I gave you is part of the
8 hospital records, is it not, sir? These two, Doctor, are the
9 same, are they not, sir?

10 A. I have to assume that is part of the hospital
11 record only because there is a room and ward number, bed and
12 doctor.

13 Q. No, Doctor, what I want you to do is to confirm
14 that 1781A is an exact duplicate of the record of Doctor
15 Nestmann's in 1781, that is the hospital records. One is
16 just a copy of the other. That is what I want you to do,
17 sir.

18 A. Okay.

19 MR. HEINEMAN: Do you have a copy of 1781A?

20 MR. CARR: 1781A, counsel, is this here.

21 Q. Doctor, is 1781A that has been passed to the jury
22 is part of the hospital records 1780, is it not, sir? 1781,
23 rather?

24 A. It appears to be.

1 Q. Well, Doctor, it is exactly. One is a copy of the
2 other, is it not, sir? 1781 is an exact copy, photocopy,
3 even the tear in the page is the same. One is a photocopy of
4 the other, isn't that correct, sir?

5 A. Yes, it is.

6 Q. And signed by Doctor Nestmann, is it not, sir?

7 A. I believe so.

8 Q. Doctor, 1781B is a blowup of the second page of
9 that hospital report signed by Doctor Nestmann, is it not,
10 sir?

11 A. Yes, I believe it is.

12 MR. CARR: I offer 1781B into evidence, if it please
13 the Court.

14 MR. HEINEMAN: Can we have the same record, Your
15 Honor?

16 THE COURT: Sure.

17 MR. HEINEMAN: With respect to 1781.

18 THE COURT: I will incorporate all arguments. It
19 is admitted over objection.

20 Q. Doctor, the hospital report is word for word -- the
21 two exhibits bearing Doctor Nestmann's signature are exactly
22 the same word for word with the exception of one line, I am
23 sorry, three lines referring to the Carnow medical index and
24 the impression of severe psychoneurosis, isn't that correct,

1 sir?

2 A. It does appear that way, sir.

3 Q. And, Doctor, the progress notes from this hospital
4 report that was sent to the commission or given to the
5 compensation commission does not contain the impression of
6 severe psychoneurosis for Harold Young, does it, sir?

7 A. I don't know, sir.

8 Q. Look at it, sir, if you would, 1780, sir?

9 A. Yes, sir. I have it right here.

10 Q. It does not contain, does it, sir, the diagnosis of
11 severe psychoneurosis for Harold Young?

12 A. No. But I don't know whether this was sent to the
13 commission.

14 Q. Doctor, you see that marked Employers Exhibit 1?
15 It is part of the record that was sent to the commission and
16 that is in the commission's record. You do see that, do you
17 not, sir?

18 A. No, I don't. Where does it say that?

19 Q. Doctor, if you would look at the exhibits that have
20 been given you, this is where it says it, sir.

21 A. No, sir. It doesn't say that, sir.

22 Q. It doesn't say severe psychoneurosis?

23 A. No, it doesn't say that this is part of the
24 commission's record. This does not refer to that record,

1 sir. This is only an index and it has somebody else's name
2 on it.

3 Q. Doctor, this has been given to us and the Court has
4 admitted it into evidence as part of the commission's
5 record. Would you accept that as correct and true, sir?

6 A. If that is the case, I accept it but --

7 Q. And, Doctor, this particular report is listed as
8 Employers Exhibit Number 1 in these commission records, is it
9 not, sir?

10 A. There is an item which reads Employers Exhibit
11 Number 1, yes, sir.

12 Q. And that item is the progress notes dealing with
13 Harold Young, signed by Doctor Nestmann, is it not, sir?

14 A. It appears to be that, sir.

15 Q. And, Doctor, it is word for word identical to the
16 hospital record, progress notes, with the exception that the
17 impression of severe psychoneurosis and the sentence
18 preceding that is omitted from the report given to the
19 commission, isn't that correct, sir?

20 A. Well, all I can say is that it doesn't contain
21 those three lines, sir.

22 Q. Doctor, I would like for you to answer my question
23 that the two reports are word for word identical with the
24 exception that the hospital notes, Exhibits 1781 and 1781A

1 include the severe psychoneurosis impression of Doctor
2 Nestmann, isn't that correct, sir?

3 A. That is correct.

4 Q. Doctor, are you aware of the fact, sir, that this
5 is considered editing?

6 A. No, sir. It doesn't have to be that at all.

7 Q. It doesn't have to be that at all?

8 A. No, not at all, sir.

9 Q. But it is, isn't it?

10 A. No, sir.

11 Q. Doctor, did Doctor Nestmann arrive at an impression
12 as part of the hospital records that this man was suffering
13 from in his impression severe psychoneurosis?

14 A. Yes.

15 Q. The man was hospitalized, was he not, sir, by
16 Doctor O'Dell?

17 A. I don't know who he was hospitalized by, sir.

18 Q. If you look at the front of the exhibit, it will
19 tell you. His doctor is Doctor O'Dell and he was employed by
20 Monsanto. That pay is going to be by Monsanto. Private
21 pay. Doesn't it say that, sir?

22 A. I don't see what you are referring to, sir. I see
23 O'Dell's signature July 27, 1955, but I don't see the other.

24 Q. Doctor, would you look at the exhibit that is the

1 hospital record Herbert J. Thomas's exhibit 1781, sir?

2 A. I have it, sir.

3 Q. Now, do you see, sir, that it is the Herbert J.

4 Thomas Memorial Hospital record?

5 A. I do.

6 Q. And do you see that the admitting doctor is Doctor

7 O'Dell?

8 A. Yes.

9 Q. And do you see that it is the employer Monsanto?

10 A. Yes, I do.

11 Q. And do you see that the account will be billed to
12 Monsanto, private pay?

13 A. Yes, I do, sir.

14 Q. And, Doctor, the next two pages of those hospital
15 records contain, does it not, sir, the Nestmann report?

16 A. Yes, sir.

17 Q. And, Doctor, so that you can see that they are in
18 chronological order, Monsanto has put microfilm page numbers
19 or page numbers on this exhibit and this report is in the
20 exact chronological order, is it not, sir, on these hospital
21 records?

22 A. I believe this is just one hospital record, sir.
23 One single record, that is correct.

24 Q. Doctor, my question to you is, you can examine the

1 numbers on Exhibit 1781 and you will see that they are
2 numerically consistent, one follows the other, they are all
3 part of one record, are they not, sir? This is the way it
4 was given to us by Monsanto, Doctor Suskind. Do you see
5 that, sir?

6 A. Yes, I do, sir.

7 Q. And, Doctor, this report which contained -- when
8 the man was hospitalized for his various problems and worked
9 up and examined by Doctor O'Dell, Doctor O'Dell caused to be
10 included in that record these progress notes, did he not,
11 sir?

12 A. I believe he wrote progress notes, yes.

13 Q. No, he wrote at the bottom of page two, sir, copy
14 for chart, Richard O'Dell, M.D., isn't that right, sir? On
15 the page number 9566145, sir?

16 A. Correct.

17 Q. And he caused Doctor Westmann's report to be
18 incorporated in this hospital chart, did he not, sir?

19 A. Yes, I believe so.

20 Q. And there is no question that what he would have
21 known and Doctor Westmann would have known, that the hospital
22 progress reports have been part of the hospital records in
23 July of '55 contain Doctor Westmann's impression of severe
24 psychoneurosis, isn't that correct, sir?

1 A. I assume so.

2 Q. Doctor, I don't want you to assume so. I want you
3 to look at the record and be sure that Doctor O'Dell who put
4 his signature on this chart as well as Doctor Nestmann would
5 have been aware of the diagnosis or the impression of Doctor
6 Nestmann, that is severe psychoneurosis on the part of Harold
7 Young. Doctor, you are now looking at the report that was
8 given to the commission. My question to you --

9 A. I am comparing them, sir. Yes.

10 Q. Didn't you already agree that they were the same
11 word for word, sir, except for the impression that was left
12 out?

13 A. No, sir. I did not. This is a copy for chart
14 signed by Richard O'Dell and is not in the report allegedly
15 submitted to the commission and there may be reasons for
16 that.

17 Q. Doctor, it wasn't allegedly submitted to the
18 commission. These records including the compensation
19 commission reports are reports that were given us by your
20 employer, Monsanto. They have been admitted into the record
21 of the evidence of this court. The Court has taken judicial
22 notice of the compensation commission. It is not alleged,
23 Doctor.

24 MR. HEINEMAN: Objection to the statement that the

1 witness is employed by Monsanto. I think Mr. Carr knows
2 better than that.

3 THE COURT: Objection is overruled.

4 Q. Doctor, the records in the commission that the
5 commission had of Doctor Nestmann's report, Employers Exhibit
6 Number 1, does not include the diagnosis of severe
7 psychoneurosis, does it, sir?

8 A. It does not and there could be reasons.

9 MR. CARR: Your Honor, would you instruct the
10 witness to quit responding -- I know there could be reasons
11 but quit volunteering things of that sort, Your Honor.

12 THE COURT: Doctor, again, you were offering
13 comments that are not called for within the scope of the
14 question that has been asked of you. I have asked you a
15 number of times today and I am asking you again please
16 refrain from doing that. Just answer the question that is
17 asked of you. No more, no less.

18 Q. And, Doctor, so that it is crystal clear, there is
19 no question that what Doctor Nestmann said, his impression of
20 Harold Young is that he has got a severe psychoneurosis based
21 upon his Cornell Medical Index Health Questionnaire and that
22 this isn't a part of the record that was in existence in July
23 of 1955, isn't that correct, sir?

24 A. In Exhibit 1781 and 1781A, yes, sir.

1 Q. Isn't that correct, sir?

2 A. It is in 1781 and 1781A, sir.

3 Q. And, Doctor, it was in existence prior to the time

4 of the compensation commission hearing, was it not, sir?

5 A. I don't know that, sir.

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

7 A. No.

8 Q. Do you see the same date, Doctor, on the exhibits?

9 And, Doctor, do you recall that you testified before the

10 compensation commission in 1956, sir?

11 A. I recall that, sir.

12 Q. And if you will look at the state compensation

13 commission page preceding Doctor Nestmann's report or it is

14 on the very same page that Doctor Nestmann's report starts,

15 it bears a date there of the 20th day of July, 1956, sir?

16 A. I am not sure I am following you, sir. What

17 exhibit?

18 Q. 1781A, sir. 1780A, I am sorry.

19 A. May I see it, sir?

20 Q. Right there, Doctor. July of 1956?

21 A. Yes.

22 Q. There is no question but what Doctor Nestmann's

23 report, that the man has severe psychoneurosis, was in

24 existence prior to July of 1956, prior to November of 1956,

1 isn't that correct, sir?

2 A. Yes. Doctor Nestmann's report in 1955, I see.

3 Q. And, Doctor, the report that was in existence in
4 1955 as part of the hospital records was edited, was it not,
5 sir?

6 A. No, sir.

7 Q. Doctor, what do you consider editing means? Let me
8 answer it for you, Doctor. Editing is changing?

9 A. Well, you ask me a question and let me answer it.
10 Would you like me to answer your question, sir?

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

13 A. Well, he asked me a question.

14 MR. HEINEMAN: Objection. He asked him a question.

15 THE COURT: And then he modified it and he has the
16 right to do so. Objection is overruled.

17 Q. Okay.

18 THE COURT: Wait until the question is fully asked
19 of you and then answer it, please.

20 Q. Doctor, editing means change, doesn't it, sir?

21 A. Not necessarily.

22 Q. Well, what else does it mean?

23 A. It means looking through a report and making sure
24 that the report is accurate. The report is accurate

1 grammatically, it is accurate factually, it is accurate in
2 this instance in the way of impressions or diagnoses. There
3 are a variety of things that in a medical report are
4 considered editing.

5 Q. Doctor, you do consider, then, that this report was
6 changed, was it not, sir?

7 A. No, sir.

8 Q. Doctor, is the report that was in existence in 1955
9 by Doctor Nestmann, did it contain an impression severe
10 psychoneurosis?

11 A. No. But that doesn't mean that it was edited.

12 Q. It did contain that, did it not, sir?

13 A. It might have been inserted later, sir.

14 Q. Doctor, excuse me. How could it be inserted
15 later? It is in the hospital records that came in in July of
16 55, sir.

17 A. Okay.

18 Q. But that is not an insertion later, is it, sir?
19 Excuse me, Doctor. That is not an insertion later, is it,
20 sir?

21 A. It could be. It could very well be.

22 Q. Doctor, this is in a report that is part of the
23 hospital records dated July of 1955, isn't that correct, sir?

24 A. Yes, sir. We have --

1 Q. And, Doctor, that preceded the report that was
2 given to the commission by a year at least, did it not, sir?
3 It was earlier than the report given to the commission,
4 wasn't it, sir?

5 A. I don't know when this report was given to the
6 commission, sir.

7 Q. Doctor, I have given you the date. The date of the
8 hearing was November of '56. There is a date appears on the
9 same page of July of '56. That is a year before the hospital
10 record was made, is it not?

11 A. Yes.

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

14 THE COURT: Yes, you may.

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

17 MR. HEINEMAN: Your Honor, as Mr. Carr knows, the
18 Workmen's Compensation Commission hearing went on for a very
19 long period of time. To just allege to this witness that the
20 only hearing was November of '56 when this witness testified
21 is patently false.

22 MR. CARR: I am not suggesting that is the case.

23 MR. HEINEMAN: That is the hearing date that you
24 gave him.

1 MR. CARR: It is a side issue. It has nothing to do
2 with the question. The question is there is a report in
3 existence of July of '55 and this report came into existence
4 July of 1955 and that is the date the same exhibit was given
5 to the commission and bears the same date. All of it.

6 MR. HEINEMAN: You are putting them in a
7 chronological sequence which is not borne out, Mr. Carr. You
8 are saying that it has to be before because the hearing was
9 in November. There were hearings for three years on this, on
10 these workmen compensation matters in Nitro, West Virginia.

11 MR. CARR: The commission couldn't very well have
12 been prior to July of '55, could it, counsel?

13 MR. HEINEMAN: I don't know exactly when they
14 started.

15 MR. CARR: This particular hearing could not have
16 been in existence prior to July of '55. There is no way.
17 There could have been a hearing that predated July of '55
18 with regard to this exhibit.

19 THE COURT: Objection is overruled. Let's
20 proceed.

21 MR. HEINEMAN: Your Honor, further, Mr. Carr has
22 suggested that this document, 1781, is in chronological order
23 and I don't think it is.

24 MR. CARR: It is in the order it was given to me by

1 Monsanto.

2 MR. HEINEMAN: That isn't the point, Your Honor.
3 He made a representation that it was in chronological order
4 and, therefore, these documents necessarily followed each
5 other in a particular sequence. I don't think that is
6 accurate. It covers all kinds of dates.

7 MR. CARR: So what?

8 MR. HEINEMAN: You are basing a premise on
9 sequence.

10 THE COURT: Let's go ahead. Objection is
11 overruled.

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

14 Q. Doctor, the report that the commission has in its
15 file is changed from the report that Doctor Nestmann created
16 in July of '55, isn't it, sir?

17 A. No, sir.

18 Q. Look at the two reports again, Doctor.

19 A. It is different but I don't think that one can say
20 it was changed. This might have been submitted to them not
21 in '56, it might have been submitted to them in '55 when the
22 patient was being discharged and I don't know that the
23 Cornell Medical Index which is recorded in the hospital
24 record, the Cornell Medical Index Test was not done after his

1 hospitalization or after this was actually submitted. That
2 is a real possibility. That is a real possibility that the
3 Cornell Medical Index Test was may be done in Doctor
4 Nestmann's office. That is a possibility and he then added a
5 real possibility that he simply added this man was asked to
6 fill out a Cornell Medical Index questionnaire and this shows
7 evidence of psychoneurosis. I don't know from this record
8 whether it was done in the hospital or after the man was
9 discharged and, therefore, I cannot say that this record was
10 changed. It simply doesn't contain that statement.

11 Q. Doctor, when was the man discharged? Let me help
12 you, Doctor. On the first page he is discharged on July 27,
13 1955. The bottom of the page, Doctor, of the 1781?

14 A. July 27, 1955, yes, sir.

15 Q. And when was he admitted to the hospital, Doctor?

16 A. I assume that --

17 Q. It is also on the cover page, Doctor. July 22,
18 1955?

19 A. Admitted?

20 Q. Yes, Doctor.

21 A. Well, then how can this report be July 6?

22 Q. Doctor, could you answer my question? It shows July
23 22, 1955, does it not, sir?

24 A. Yeah. Which differs from the report.

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

3 THE COURT: Doctor. Again --

4 Q. Okay. Sorry.

5 THE COURT: Remember what I said before. Confine
6 your answers to the questions, Doctor.

7 Q. And, Doctor --

8 MR. HEINEMAN: Objection. May counsel approach the
9 bench?

10 THE COURT: Yes, you may.

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

13 MR. HEINEMAN: Your Honor, this is what I am
14 talking about in terms of this sequence business that Mr.
15 Carr has alleged. The witness has laid eyes on something
16 that I didn't even see. The hospital record shows he was
17 admitted 16 days after this report.

18 MR. CARR: Exactly right, counselor. We have
19 already established that Doctor O'Dell had it made part of
20 his chart. It said so. If you turn the page, counsel, you
21 will see that. We have already established that Doctor
22 O'Dell --

23 MR. HEINEMAN: That has nothing to do with it.

24 MR. CARR: That is what you think.

1 THE COURT: Objection is overruled.

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

4 Q. Doctor, the man was admitted on July 22 and
5 discharged on July 27, was he not, sir?

6 A. That is what the head sheet of the Thomas Memorial
7 Hospital indicates, sir.

8 Q. And Doctor Nestmann's report was made on July 6,
9 1955, was it not, sir?

10 A. That is correct.

11 Q. Prior to the time the man entered the hospital on
12 that particular time, isn't that correct, sir? July 6 is
13 before he was admitted to the hospital on July 22, isn't that
14 correct, sir?

15 A. That is correct, sir.

16 Q. And, Doctor, the report of Doctor Nestmann was
17 written by Doctor O'Dell at the bottom. It says copy for
18 chart, isn't that correct, sir? Richard O'Dell, M.D.?

19 A. That is correct.

20 Q. And, Doctor, we have already established what
21 Doctor O'Dell did. He had Doctor Nestmann's report and he
22 put it in the hospital record as part of Harold Young's
23 chart, isn't that correct, sir?

24 A. That is what Doctor O'Dell did, sir?

1 Q. That is correct, sir, is it not, sir?

2 A. Yes.

3 Q. All right. Now, Doctor, that was in existence,
4 therefore, in July of '55, was it not, sir, with the
5 diagnosis on it psychoneurosis, severe psychoneurosis?

6 A. I am actually confused, sir, about the sequence.

7 Q. Doctor, this report was in existence in July of
8 1955 bearing the diagnosis severe psychoneurosis, was it not,
9 sir?

10 A. Yes, it was.

11 Q. And, Doctor, the document given to the commission
12 and as part of this record, sir, does not contain that
13 diagnosis, does it, sir?

14 A. It doesn't contain that particular diagnosis.

15 Q. It is changed or different from the diagnosis that
16 was made in July of '55, is it not, sir?

17 A. No. No, sir.

18 Q. Are you reading the same report, Doctor, that I am
19 reading?

20 A. Yes. I am reading 1780A.

21 Q. Does the document that is in the commission record,
22 does it include the diagnosis of severe psychoneurosis?

23 A. It doesn't include any diagnosis, sir.

24 Q. Doctor, does it include the diagnosis of severe

1 psychoneurosis?

2 A. No, it does not.

3 Q. It is different from the July of 1955 report that
4 is part of the hospital records, is it not, sir?

5 A. It is.

6 Q. And, Doctor, is a change -- when one edits
7 something, does one change something?

8 A. If you are asking about a general statement --

9 Q. Yes, Doctor, when one edits something, does one
10 make it different than what it was?

11 A. Might.

12 Q. And, Doctor, the report that was given to the
13 commission is changed from the report that was in the
14 hospital record?

15 A. No, sir. It is different. Not changed.

16 Q. Doctor, does it contain the diagnosis, that is,
17 severe psychoneurosis?

18 MR. HEINEMAN: Objection. Asked and answered.

19 THE COURT: Objection is overruled.

20 A. There is no diagnosis on that chart, sir. The
21 diagnosis is not there, sir.

22 Q. The question I have asked you, does it contain the
23 diagnosis of severe psychoneurosis, Doctor?

24 A. It does not, sir.

1 Q. Doctor, the reports that you read of Doctor
2 Nestmann that were given to the commission, not just with
3 Harold Young but all of the reports signed by Doctor Nestmann
4 of which you are aware, none of those reports contained the
5 diagnosis of Doctor Nestmann, that is that the man had these
6 severe, moderate or mild psychoneurosis, isn't that correct,
7 sir?

8 A. That is not so, sir.

9 Q. Doctor, this morning Monsanto delivered to us the
10 workmen's compensation records that contain Doctor Nestmann's
11 report, his written reports that were submitted to the
12 commission. I have placed a yellow tab on each of those
13 reports that is in 1782. I would like for you to look at
14 each of those reports, sir, and tell me if there is a single
15 one of those reports that contains a diagnosis of severe
16 psychoneurosis?

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

19 THE COURT: Yes, you may.

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

22 MR. HEINEMAN: I object, Your Honor, to this
23 procedure when Mr. Carr is allowed to make these outrageous
24 statements. First of all, he is implying that we just gave

1 him these. All right. He asked for them yesterday, okay.
2 The Court said deliver them last night. All right. We
3 called him at seven o'clock to deliver them last night and he
4 wasn't there. So we gave them to him this morning, all
5 right. So that is the explanation for that.

6 The second thing is, these are document that went
7 to the Appeals Board. All you have to do is look at the
8 document. It went to the Appeals Board. It didn't go to the
9 commission and I object to it on that ground. It is an
10 obviously misleading statement.

11 MR. CARR: Three weeks or four weeks ago I asked for
12 all of the reports that Monsanto had relative to Doctor
13 Nestmann. All the reports that Monsanto made. We were
14 delivered a small stack of reports by Doctor Nestmann by Mr.
15 Nassif in which he said these are all the reports by Doctor
16 Nestmann that we have. Now, yesterday, at the conclusion of
17 the day we asked for reports Monsanto had that they had given
18 to the Workmen's Compensation Commission. Lo and behold we
19 come up now and this is what was given to us as reports that
20 were given to the commission, the ones that have the yellow
21 tab on it. They cannot have it both ways. They have
22 represented to us that these were the reports that were given
23 to the commission and the Court ordered them to give us the
24 reports that were given to the commission. These are the

1 reports that we have and these are all the reports that we
2 have and that is the ones that were given to the commission.

3 MR. HEINEMAN: We haven't finished the compliance
4 yet, Mr. Carr.

5 MR. NASSIF: First of all, Your Honor, this is the
6 report that was given to Mr. Carr long ago. It is a report
7 of Doctor Nestmann. I specifically wrote on the receipt
8 these are reports that you had not previously received. You
9 had that before. Specifically wrote on the report that I
10 gave to Mr. Carr right underneath his name we are providing
11 him only with those we have not previously produced.

12 THE COURT: You mentioned that the other day.

13 MR. NASSIF: And, Your Honor, this is one that he
14 had. There is proof that he had copies of Nestmann's
15 reports.

16 MR. CARR: This is one that you gave me three weeks
17 ago, counsel. The one you have in your hands was given me
18 three weeks ago.

19 MR. NASSIF: You are right. You have others like
20 that. If you want me to prove that on the microfilm.

21 MR. CARR: We have been past that.

22 THE COURT: We have been through microfilm.

23 MR. CARR: It is not production and you know it.

24 MR. NASSIF: It is so production.

1 THE COURT: Wait a minute. Whoa, whoa, whoa. The
2 question whether this is constructive production, whether
3 that complies with the rules is not relevant to the objection
4 that we are making now is a different issue.

5 MR. NASSIF: Let me get to the other issue. The
6 issue is he asked for, he took this memo up to you, Your
7 Honor, and this is the way I understood. I didn't even know
8 about this document when I made my production. We got this
9 document from Charleston, West Virginia. Okay. But, Your
10 Honor, it says here concerning psychoneurosis so I asked to
11 have the Nestmann reports sent to me from Charleston that had
12 to do with psychoneurosis. This is what the document Mr.
13 Carr specifically requested and that is what I got and that
14 is what I produced to Mr. Carr, the Nestmann reports having
15 to do with psychoneurosis and he got all of those. Now, he
16 is saying that we should have provided him with what was
17 provided to the comp appeal board in 1957. These aren't --

18 MR. CARR: That isn't even the issue, Mr. Nassif.

19 MR. NASSIF: Yes, it is the issue, Mr. Carr. These
20 are the documents that we reviewed at this meeting on
21 November 18, 1955 having to do with psychoneurosis and that
22 is the way I understood it. We didn't have these documents
23 here in St. Louis. I just sent over to Charleston and they
24 sent me the Netsmann reports on psychoneurosis and that is

1 what I produced to him. We didn't have these document here.
2 So, I object to him saying that we did not in good faith
3 respond to your prior order three weeks ago.

4 In addition, he has got numerous documents like
5 this one on the microfilm and we have always, as I said on
6 the receipt that we gave to him, we indicate that with the
7 exception of what we have previously produced we are
8 supplementing what we had on these reports on psychoneurosis
9 so we did honor this request. This was produced following
10 your order yesterday for us to produce what Monsanto gave to
11 the commission. I asked. I found a copy of this that we did
12 just receive and I produced it this morning because it was in
13 Belleville as was instructed. I called last night at seven
14 twice. Nobody answered. I was in the office at 7:30 this
15 morning looking through more document. We worked until 10
16 o'clock last night, so we have done everything we can to
17 comply with your orders in good faith.

18 We gave him this. It does have Nestmann's reports
19 in it that I found out about as I was going through it and
20 these reports do not discuss psychoneurosis or -- obviously,
21 I asked for the reports that discuss psychoneurosis. That is
22 what I got from Charleston and that is what I produced to
23 him.

24 MR. CARR: That isn't the issue. Counsel has

1 objected to me telling this witness that these are all Doctor
2 Nestmann reports that we have that were submitted to the
3 commission and it is indeed. All the Doctor Nestmann reports
4 that we have that were submitted to the commission. They
5 were delivered to us just this morning. He has already
6 represented to him that we did this sometime ago.

7 MR. HEINEMAN: First of all, we don't know yet
8 whether these are all the reports.

9 MR. CARR: Then how can you object to that statement
10 that these are all the Nestmann reports?

11 MR. HEINEMAN: Because we think there are more. We
12 think there are more.

13 MR. NASSIF: We know there are other comp files.

14 THE COURT: Basically at this point in time you are
15 saying you think there are more, you don't know if there are
16 any more. You don't know if there are any more and as long
17 as it is purposefull, that is all that we have at that time.
18 Then we have to wait and see what else comes out at
19 Charleston.

20 MR. NASSIF: We know that Nestmann did reports and
21 each one of those individuals that he did reports on has got
22 a record like this in front of the comp commission. My logic
23 would tell you that since this is Harold Young and his --

24 MR. CARR: Harold Young is in here, counsel, just

1 exactly like that one.

2 MR. NASSIF: But there are other reports like this
3 one for other plaintiffs claiming amounts in the comp hearing
4 so there are other documents. Whether we have them or not, I
5 don't know. That is what we called Charleston for but I can
6 tell you there are others in the comp file like this.

7 MR. CARR: I want to get them all.

8 MR. HEINEMAN: My point here, Your Honor, is that
9 this is a document that was submitted to the Workmen's Comp
10 Appeals Board. It isn't necessarily all documents.

11 MR. NASSIF: 1957, Your Honor. It is a year after
12 this situation. So to confuse '82, they are different
13 proceedings. This one is a 1957 in May and that is in mid
14 1956.

15 MR. CARR: So what? My question still stands. That
16 this is all the Doctor Nestmann reports that were given to us
17 that were submitted to the compensation commission. That is
18 an accurate statement, an accurate representation to the
19 witness.

20 MR. NASSIF: I don't think that is an accurate
21 representation, Your Honor, based on the microfilm and we
22 still consider the microfilm to be production. These
23 documents came off the microfilm. There are other documents
24 like this.

1 THE COURT: At this point in time without any
2 further production, the statement that was made when these
3 documents were referred to in front of the jury, that that is
4 what we have got at this point in time, it is accurate. I
5 think for the sake of accuracy, you should indicate that
6 these were submitted to the Appeal Board but it does not make
7 improper the statement because it is part of the Workmen's
8 Compensation proceeding and --

9 MR. CARR: Your Honor, even on that point, this is
10 the record that came from below that was submitted to the
11 Appeals Board. It had to be part of the record below or it
12 would never have gone up.

13 MR. NASSIF: It is a brief we filed with the Appeal
14 Board, Your Honor.

15 THE COURT: Are you claiming that this is briefing
16 an appeal and would be submitting new evidence to the Appeal
17 Board at the Comp Commission?

18 MR. NASSIF: I don't know, Your Honor. They might
19 very well be. I am sure there was an argument that they
20 hadn't submitted to the commission and this is about a 50
21 page argument.

22 THE COURT: The legal argument, I would think that
23 they hadn't, but are you telling me that -- wait a second.
24 Are you telling me that they are going to attach new

1 exhibits?

2 MR. NASSIF: I don't know, Your Honor. I really
3 don't.

4 MR. HEINEMAN: What you have to do is look at it.

5 THE COURT: I think that is very unlikely.

6 MR. HEINEMAN: If you look at it, you will see what
7 is in there. For example, a summary of testimony. In other
8 words, they are summarizing what so and so testified to about
9 a particular ailment. That is in there.

10 MR. CARR: Sure, and the reports.

11 MR. HEINEMAN: Something prepared for the Appeal
12 Board.

13 MR. CARR: And the reports of Nestmann man were
14 submitted at the hearing. Those statements are also in
15 there.

16 MR. NASSIF: Not in this form. There are no
17 Nestmann reports in that form.

18 MR. CARR: So what? The question that I have given
19 the witness is that these are all of the Doctor Nestmann
20 reports that were submitted to the commission that had been
21 given to us and these were given to us this morning and
22 challenging him to find the Nestmann reports of the severe
23 psychoneurosis. That is the point. You are challenging the
24 statement that these are not the records of the commission.

1 They are the records of the commission. It is all the
2 records of the commission that have been given us as of this
3 morning.

4 MR. NASSIF: It is not all of the records of the
5 commission, the records of the commission.

6 MR. CARR: That have been given us by you, counsel.

7 MR. NASSIF: They are from Monsanto as attached to
8 a brief as we have filed.

9 MR. CARR: That have been given us.

10 MR. NASSIF: To date. We got the request
11 yesterday.

12 THE COURT: Okay. The indication on page 11 of the
13 brief, it concludes that the summaries of testimony were
14 submitted to the commission and I think it is very unlikely
15 that in a matter such as this it would have been submitted on
16 the appeal. The objection is overruled. You may proceed
17 without modification. I think the appeals document reflects
18 what went on below as one would normally think an appeals
19 document to do. You may proceed.

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

22 Q. Now, Doctor, while we were at the bench, have you
23 had a chance to check all the Doctor Nestmann reports
24 submitted to the commission?

1 A. I had a chance to look through a few of them, sir,
2 yes.

3 Q. Doctor, I want you to check them all, all the
4 Nestmann reports and tell me whether or not a single one of
5 those reports contain an impression or diagnosis that these
6 men had severe psychoneurosis or mild or even moderate
7 psychoneurosis? The ones that have the yellow tab on them,
8 Doctor, are the ones that are the Nestmann reports. To save
9 you time. You are not even close to the yellow tabs,
10 Doctor.

11 A. I understand, sir.

12 Q. Let me help you, sir.

13 A. There are some Nestmann reports before that, sir.

14 Q. Doctor, there are not Nestmann reports before
15 that. There are references to Nestmann testimony. My
16 question to you, sir, relates to Nestmann reports. Will you
17 look at the ones that have the yellow tab, sir?

18 MR. HEINEMAN: Excuse me, Your Honor. Is there a
19 mark on that exhibit of an Exhibit Number?

20 A. Yes, there is.

21 THE COURT: I think so.

22 A. 1782.

23 MR. HEINEMAN: Has it been offered?

24 MR. CARR: No, it hasn't been offered, Your Honor.

1 THE COURT: I don't believe it has. My records
2 show it has not been offered.

3 MR. HEINEMAN: I would object to asking the witness
4 about it until it has been offered.

5 MR. CARR: Your Honor, I am asking the witness to
6 examine the exhibit and to answer a question relative to
7 whether or not there is a single Nestmann report there that
8 has that diagnosis. I don't think I have to offer the
9 exhibit in order to ask the question.

10 THE COURT: Gentlemen, could you approach the
11 bench, please?

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

14 THE COURT: I would rather this type of thing go on
15 up here.

16 MR. HEINEMAN: If the Court is taking judicial
17 notice of these matters that are, you say, that is an
18 extension of the Workmen's Comp Commission, if you are indeed
19 taking judicial notice of it, then I think it ought to be
20 offered and it ought to be admitted before the witness is
21 questioned about it.

22 MR. CARR: Your Honor, the fact that the Court has
23 taken judicial notice of the authenticity does not mean that
24 the exhibit thereby automatically becomes admissible. There

1 are a lot of reasons to keep out authentic documents about
2 which there is no question of authenticity and simply because
3 the Court takes judicial notice of records, the Court doesn't
4 mean they are admissible. I don't intend to offer this
5 document because it is a Monsanto produced document and
6 contains a number of self-serving statements on the part of
7 Monsanto. I ask that the witness examine it because it is
8 that these are reports that are submitted to the commission
9 and I am asking the witness to tell us whether or not there
10 is a single report there because he has said that they did
11 submit reports to the commission that were not edited, that
12 contained the diagnoses and this is an effort to impeach this
13 witness and to impeach Monsanto as to what they really did
14 not do.

15 Now, there are a wide variety of statements in the
16 Monsanto document, self-serving statements that do not become
17 admissible simply because the Court will take judicial notice
18 of the authenticity of a particular document.

19 MR. HEINEMAN: Your Honor, I will mark it and I
20 will offer it. We are in the Defendant's case. I will mark
21 it and I will offer it and have the Court take judicial
22 notice of it.

23 MR. CARR: At an appropriate time you can mark it
24 and you can offer it and I can object to it if I have

1 objections to it.

2 MR. HEINEMAN: Well, I will mark it and offer it
3 right now.

4 MR. CARR: Counsel, you cannot because I have got
5 the witness at this point in time and I am asking the witness
6 questions and I would object to you doing anything of the
7 kind to interfere with my cross examination.

8 THE COURT: You can mark it and offer it later.
9 Objection is overruled.

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

12 Q. How far along are you, Doctor?

13 A. I have a little more to go.

14 Q. Doctor, you are taking these reports out of the
15 exhibit, out of the order that they were in. I didn't ask
16 you to do that.

17 A. Well, I want to make sure that I have all of the
18 Nestmann --

19 Q. Doctor, all I asked you to do was to look at the
20 ones with the yellow tab.

21 A. I am doing that, sir.

22 Q. But you are doing more than that, Doctor. You are
23 breaking up the exhibit.

24 A. Not really. I am simply --

1 Q. Doctor, don't take any more out, Doctor, but
2 looking at the exhibits that have the pages that have the
3 tabs on them and see if those are Nestmann reports and
4 whether or not they contain a statement of severe
5 psychoneurosis or moderate or mild psychoneurosis, will you
6 do that please, Doctor?

7 A. Yes, sir.

8 Q. Doctor, that is not a Nestmann report. Here is the
9 yellow tab here, sir. Doctor, the page you are looking at is
10 not one with a yellow tab on it. It is not a Nestmann
11 report.

12 A. It is a diagnostic report, sir.

13 Q. Doctor, this is a summary about Doctor Nestmann's
14 testimony by counsel for Monsanto. I am asking you, Doctor,
15 to look at the Nestmann reports submitted by Monsanto.

16 A. That is reference.

17 Q. This is not a report. You see it says summary of
18 Doctor Nestmann's testimony. You know the difference between
19 testimony and a report, don't you, Doctor?

20 A. I believe I do, sir.

21 Q. Thank you, Doctor. One more, Doctor.

22 A. If you allow me to read these, I will be happy to
23 answer your question.

24 Q. Doctor, I am allowing you to read them. I want you

1 to look for statements in the reports of the psychoneurosis?

2 A. I would like to have the time to read them, sir.

3 Q. Now, Doctor, you have looked at all the pages that
4 have yellow tabs on them. On those Doctor Nestmann reports,
5 was there any mention to the commission in those reports that
6 any of the workers had severe, moderate or mild
7 psychoneurosis?

8 A. On these reports sent to the commission, sir --

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

10 A. Well, in those reports, sir, I don't see any
11 mention of psychoneurosis.

12 Q. Thank you, Doctor.

13 THE COURT: Mr. Carr, we are going to have to break
14 at this time.

15 MR. CARR: Yes, Your Honor. That is part of the
16 record.

17 THE COURT: Ladies and gentlemen, we will end the
18 proceedings for the day at this time. We will resume again
19 tomorrow morning at 9:30. I would remind you as I do on any
20 overnight break you are not to read, listen to or watch
21 anything about this case in particular or the subject matter
22 in general in any of the media. Thank you for your attention
23 and cooperation. Court is adjourned. Gentlemen, could I see
24 you in chambers, please.

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

3 THE COURT: You wanted to finish making a record on
4 the wipe samples and I cut you off and I told you you could
5 do it later. On the counting of sample results and I told
6 you you could do it later. It is now later.

7 MR. HEINEMAN: Well, what I wanted to do was get
8 into the record the location in the exhibit of the, the
9 specific exhibit number and the page in the exhibit where
10 those items were and my contention that they should have been
11 provided to the witness, but what I wanted to finish was, it
12 wasn't clear in the record exactly what I was referring to
13 and I don't have the darn record here now, I don't think.
14 Well maybe I do. It is Plaintiffs' Exhibit 1528 and it is
15 the 78th page of that exhibit entitled Table 1B Wipes in
16 which all of the samples reflect none detected for TCDD.

17 MR. CARR: What building is that, counsel?

18 MR. HEINEMAN: Well, you told me the whole --

19 MR. CARR: I didn't even refer to 1528, counsel. I
20 referred to 1530 and 1527.

21 MR. HEINEMAN: You asked the witness about wipes.
22 You asked weren't there wipes.

23 MR. CARR: Of Building 79?

24 MR. HEINEMAN: Yes, and the wipes are all none

1 detected.

2 MR. CARR: What building are you referring to?

3 MR. HEINEMAN: I am referring to the same exhibit
4 you were, sir. You said in the record, told the Court that
5 this was building number 79.

6 MR. CARR: What building was the exhibit referring
7 to?

8 MR. HEINEMAN: I don't know what building the
9 exhibit was referring to.

10 MR. CARR: The exhibit that I had, 1530, and 1530
11 was referring to building 78-79, counsel.

12 MR. HEINEMAN: The record will be clear, Your
13 Honor, based upon the representation Mr. Carr made in the
14 record with respect to exhibit 1528 when he was questioning.

15 MR. CARR: I didn't even mention 1528.

16 MR. HEINEMAN: Because you questioned the witness
17 about the sweepings.

18 MR. CARR: Sweepings were in Building 79, counsel.
19 Exhibit 1530. Not wipes, sweepings.

20 MR. HEINEMAN: Well, the record will be clear.

21 MR. CARR: And you have an exhibit that refers to
22 wipes, have you not, sir?

23 MR. HEINEMAN: I have a record that refers to
24 sweepings and wipes. They are both in the same record and

1 you read him one and not the other.

2 MR. CARR: That is right, counsel. I did not read
3 him 1528.

4 MR. HEINEMAN: You read him the sweepings from 1528
5 and not the wipes from 1528.

6 MR. CARR: Well, it is silly to argue, counsel.

7 MR. HEINEMAN: Yes, it is.

8 THE COURT: Okay. My decision at the time I think
9 was right. It was clear I am afraid as often happens in some
10 of these arguments at the bench, we were going over things
11 again and I haven't heard anything that would change my
12 opinion on the ruling I made out there so I would make the
13 same ruling so we can finish up the record. Okay.
14 Gentlemen, see you in the morning.

15 COURT ADJOURNED:

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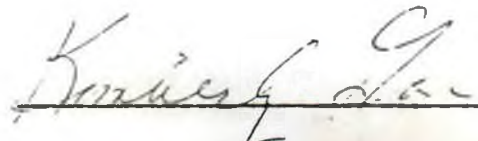
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1 STATE OF ILLINOIS)
2 TWENTIETH JUDICIAL CIRCUIT) SS
3 COUNTY OF ST. CLAIR)
4

5 I, Kimberly Ganz, one of the Official Court Reporters, do
6 hereby certify that the foregoing transcript is a true and
7 correct transcript of the proceedings had in the
8 above-entitled cause.

9 Dated this 25 day of March, 1986.

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13 KIMBERLY GANZ
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1 STATE OF ILLINOIS)
2 TWENTIETH JUDICIAL CIRCUIT) SS
3 COUNTY OF ST. CLAIR)
4

5 I, RICHARD P. GOLDENHERSH, one of the Judges in and for
6 the Twentieth Judicial Circuit, do hereby certify that the
7 foregoing transcript is a true and correct transcript of the
8 proceedings had in the above-entitled cause.

9 Dated this ____ day of March, 1986.

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HON. RICHARD P. GOLDENHERSH

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