

Monsanto

FROM
NAME-LOCATION-PHONE:

D. R. Bishop -- F3EE -- 4-2891

DATE : May 17, 1984

cc R. T. Berendt - E2ND
J. F. Hussey - F3EA
D. F. Snively - E2ND

SUBJECT :

REFERENCE :

TO : J. T. Nolan - D1A

SUBJECT TO PROTECTIVE ORDER.

On May 16, in response to informal requests (not First Amendment requests) from UPI and The Washington Post, U.S. District Judge John Copenhaver ordered certain documents under seal in the Nitro lawsuit be released to the public. At the same time the Judge granted us 24 hours to appeal the order. This afternoon the Judge further stayed his order until May 21.

The order pertains only to documents presented as exhibits on a motion by Monsanto to bar the workers from bringing suit on statute of limitations' grounds. That motion was denied two weeks ago.

We have opposed the release of these documents on the grounds that they would create prejudicial pretrial publicity and violate individual privacy rights. As of this writing (4 P.M., May 17) our lawyers have not decided whether to appeal this order.

At the same time, the Judge has asked us to "show cause" by May 18 why the seal should not be lifted on all remaining documents relating to the lawsuit.

Our lawyers tell me that from a public relations perspective some of these documents will be embarrassing and damaging on their own face, e.g., a 1978 memo from Bill McCarville to the CAC in which he says: "Dr. Suskind, while he may be part of the (Nitro health study) consulting team, would not be in charge of the effort," and a 1965 memo from Dr. Emmet Kelly in which he says: "According to Dow, it (2,3,7,8-TCCD) is 100 times as toxic as parathion and capable of causing an incapacitating chloracne."

Other Monsanto documents would also be difficult to explain when viewed out-of-context. The upshot is that a fair trial will be impossible if the Charleston media are given these documents. Even the Judge recognized this when he stated yesterday that if adverse pretrial publicity results, he would consider moving the site of the trial.

If he carries out his threat to lift the seal in its entirety, we will immediately appeal to the 4th Circuit in Richmond, Va.

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In a worse case scenario, within the next week or so the local press in Charleston and St. Louis and many other major news media around the country, including the networks and the MacNeil Lehrer News Show on PBS, could well be trying this case before it ever gets to court. With Agent Orange now moved to the back burner, it's clear that the news media see Nitro as the test case for dioxin.

The media's interest will not diminish if the judge maintains the seal -- it will merely be more difficult for them to air stories of "substance."

This, notwithstanding, we're moving rapidly to a point where we are going to need a top management decision regarding our public relations strategy. Assuming the documents are released:

1. Do we aggressively respond to the charges and embarrassing statements contained in plaintiffs' brief?

The upside of this approach will tend to produce "more balanced" stories, with Monsanto comments in defense of our position, our actions and our corporate reputation included -- but only if we have the management commitment to respond openly, using whatever staff spokesmanship resources are required.

The downside is that this approach will seriously jeopardize, if not doom our chances for a change of venue in the case. (Moving the trial, by the way, could work against us, depending on where it's moved to).

2. Or -- do we clam up and take our lumps in the news media? (in order to hopefully preserve our case for a change of venue) -- the only upside of this approach.

Obviously, the downside here will produce one-sided, negative stories that paint us as immoral, irresponsible or willfully negligent. Our corporate reputation will take a beating and the ripple effect could adversely impact employee morale throughout the country.

As I see it, we're at a decision point. Naturally, I'd recommend option 1 but I'm in no position to evaluate the importance of preserving our case for a change in venue.

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DRB
D. R. Bishop

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attachments:

1. May 17 P-D article partially describing this problem
2. Press Pickup on Suskind Health Study