

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

4 FRANCES E. KEMNER, et al., )

5 Plaintiffs, )

6 vs. )

NO. 80-L-970.

7 MONSANTO COMPANY, )

8 Defendant. )

9 Before the HON. RICHARD P. GOLDENHERSH, Judge

10  
11  
12 JURY TRIAL

13 April 16, 1985

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15  
16  
17  
18 APPEARANCES:

19 MR. REX CARR and MR. JERRY SEIGFREID, Attorneys at Law  
20 Appeared on Behalf of the Plaintiffs

21 MR. JOHN R. MUSGRAVE and MR. JOSEPH NASSIF, Attorneys at  
22 Law, Appeared on Behalf of the Defendant

23 MARSHA SCHNIPPER  
24 Official Court Reporter

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## PHOCION PARK

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1 BE IT REMEMBERED AND CERTIFIED that heretofore, on  
 2 to-wit: Tuesday, April 16, 1985, being one of the regular  
 3 judicial days of this Court, the matter as hereinbefore set  
 4 forth came on for hearing before the HON. RICHARD P. GOLDENHERSH,  
 5 Circuit Judge in and for the Twentieth Judicial Circuit, State  
 6 of Illinois, St. Clair County Building, Belleville, St. Clair  
 7 County, Illinois, and the following was had of record, to-wit:

8 \* \* \* \* \*

9 PHOCION PARK,

10 resuming the witness stand having been previously sworn,  
 11 testified further as follows:

12 CROSS EXAMINATION (Continued)

13 BY MR. CARR:

14 Q Mr. Park, referring again to the Chart 1301 and 1301a  
 15 -- and I see yours has been taken -- handing you again 1301  
 16 and also handing you Plaintiff's Exhibit 1168, and it's turned  
 17 to Table 2, and that indicates, does it not, that 2,4 dichloro-  
 18 phenol that has the words DCP spill next to it had 5875 parts  
 19 per billion of trichlorodibenzo-p-dioxin. Do you see that,  
 20 sir, the first --

21 A It has the M-O-N-S on top of it?

22 Q Yes. It's this one here. We're down to here.

23 A Yes.

24 Q All right. And that has the trichlorodibenzo-p-dioxin

1 at the level of 5,875 parts per billion, does it not, --

2 A I see that.

3 Q -- according to that Monsanto study?

4 A Yes, sir.

5 Q And it has the tetradioxins at 487 parts per billion?

6 A Yes.

7 Q And it has total dioxins of, if you would add those  
8 up briefly, in that line of 48 -- some 48,000 parts per billion  
9 of dioxins, does it not, sir?

10 A Well, let's see now. Which line?

11 Q Line 1 on Table 2.

12 A Well, I -- let's see, total -- adding up all of  
13 the numbers in that first line I get 50,997. I may have --  
14 maybe I punched the wrong number.

15 Q Well, you probably are more correct in that instance  
16 than mine, because just the -- B-24 and 20 would be 44, 49, it  
17 would be closer to 50,000 parts per billion than 48,000, would  
18 it not, sir?

19 A Right.

20 Q Now, that 50,000 parts per billion of total dioxins  
21 is what, two hundred times higher than the 250 parts per billion  
22 total dioxins Dr. Nair said should be reported to the EPA?  
23 Is that the -- 250, sure, it would go two hundred times higher  
24 than that, wouldn't it, sir?

1 A I don't know that Dr. Nair phrased it quite that way,  
2 but I guess 250 would go into 50,000 two hundred times.

3 Q Now, this is a 2,4 dichlorophenol that was in the  
4 process of being shipped when a portion of it, I forget the  
5 amount, some several drums of spill were cleaned up in February  
6 of '79, several drums of dirt contaminated with that spill were  
7 cleaned up, but this shipment containing 50,000 parts per  
8 billion of dioxin was shipped out to customers, Mr. Park,  
9 according to the testimony in evidence. To your knowledge  
10 was there ever a Section 8(e) meeting held to determine whether  
11 or not you should report this to the EPA notwithstanding that  
12 it had two hundred times the level of dioxin that Dr. Nair  
13 said to be sure in 1985 should be reported? Do you know whether  
14 or not such a meeting was ever held, sir?

15 A Mr. Carr, that was a different product, different  
16 context entirely. I don't know that it's proper to equate  
17 Dr. Nair's --

18 Q Mr. Park, I don't want to get back into the use and ex-  
19 posure, because the -- we've gone through that. Your view of  
20 what is exposure is contrary to my view. Your Monsanto view  
21 is contrary, and you're entitled to have that view, but now my  
22 question is was that to your knowledge the subject of a Section  
23 8(e) meeting and was it ever reported to the EPA?

24 A I don't recall that there was an 8(e) meeting over

1 this shipment.

2 Q And my next question is was it ever reported to the  
3 EPA?

4 A Not to my knowledge.

5 Q To your knowledge was the customer that received this  
6 shipment, whether it was going to be incorporated into oil well  
7 additives that workers would be exposed to by just working with  
8 the additive or whether or not it goes into 2,4 D or Weed-b-gone  
9 to be sprayed on people's lawns. Do you know whether or not  
10 the customer was ever notified that it was receiving a shipment  
11 that contained 50,000 parts per billion of dioxin?

12 A I don't know, but I would not know whether they were  
13 or not.

14 Q The next entry there on the chart is for KB6068. It  
15 again is 2,4 DCP, and it was manufactured or at least tested  
16 in 1982. Do you see that, sir?

17 A Yes, 66016.

18 Q And that's the product described in Plaintiff's  
19 Exhibit 1184 and 1184a. Do you see that in the numbers there,  
20 the KB6016?

21 A Yes, I do.

22 Q And the -- do we have 1184, Jerry? Unless you --  
23 you can see that from there. We can use that.

24 A Yes.

1 Q Just if you would confirm that the dioxin, including  
2 the one with the caret, the CL3 totalled up to 1461 parts per  
3 billion dioxin in this sample of 1982?

4 MR. MUSGRAVE: This was 1184, Mr. Carr?

5 MR. CARR: 1184, the exhibit is 1184a right here.  
6 If you want, use our copy of it.

7 A Now there I had those figures to total 1128. Oh,  
8 one minute.

9 Q Now you must not add the 17 again, because that's  
10 included in the 72.

11 A I did. Let me take that out then. I get 1,111.

12 MR. MUSGRAVE: I'm sorry, I didn't hear you.

13 MR. CARR: He said 1,111. I've got it added up to  
14 1461. Let's see, that would be 630, 870, 1080 and 72 would be  
15 about eleven hundred -- 1150. I think we accept your figures,  
16 and I'll modify this.

17 THE COURT: What was the number again? I'm sorry.

18 MR. CARR: I'm not sure, your Honor. I'll have to  
19 add that again.

20 THE COURT: Okay.

21 MR. CARR: There's two 606's. Add this next one up.  
22 I may have gotten two columns. Here's one is 44 tri -- yes,  
23 add this second column up, the replicate.

24 A Okay. Here in this, going across that second line I

1 get 1461.

2 Q Well, that's apparently the one that I added rather  
3 than the first one.

4 MR. MUSGRAVE: May I inquire, Mr. Park, did you add  
5 the 44 under the CO<sub>2</sub> column?

6 MR. CARR: Yes, he did.

7 THE WITNESS: Yes, I did.

8 MR. MUSGRAVE: I would object then, your Honor, to  
9 this calculation as including an interference which is not  
10 reflective of their being 44 parts per billion based upon testi-  
11 mony with regard to the interpretation of this exhibit and  
12 other exhibits.

13 THE COURT: Overruled.

14 Q This figure of 39 should be changed to 44 if we're  
15 using that column, is that not correct, and the 72 should be  
16 changed to 87? Now, the next one is Sample 6018 would be on  
17 the same exhibit that you have. Would you add that please, sir,  
18 and --

19 A I'm sorry, what was that, which one?

20 Q 6018, KB6018.

21 A All right. Yes, I get 557.

22 Q And the tridioxin --

23 MR. MUSGRAVE: Just a moment. Mr. Park, again are  
24 you adding 27?

1 THE WITNESS: Yes.

2 MR. MUSGRAVE: Again I would object for the same  
3 reason that it reflects an interference that does not reflect  
4 27 parts per billion.

5 THE COURT: Overruled.

6 Q And that shows not more than 27 parts per billion of  
7 the tridioxin and 44 parts per billion of the tetradioxin, is  
8 that correct, sir?

9 A That's correct.

10 Q Along with the other figures?

11 A Yes.

12 Q And the Tank 164, the replicate sample has 57 --  
13 more than 57 parts per billion trichlorodibenzo-p-dioxin, 140  
14 parts per billion of the tetradioxin, and a total of 903 parts  
15 per billion of dioxin, is that correct, sir?

16 A Let me -- let's see. Okay. Including this 57 with  
17 the less than sign in front of it I get a total of 1957.

18 Q All right. And the Sample KB6017 --

19 MR. MUSGRAVE: May my objection also run with regard  
20 to Tank 164 as shown on Plaintiff's 1301 as including the 57  
21 for the same reason as previously stated.

22 THE COURT: Fine. So noted.

23 Q Referring now to KB6017 it shows not more than 38  
24 parts per billion of tridioxin, 65 parts per billion of the

1 tetra for a total of 903 parts per billion of dioxins, is that  
2 correct, sir?

3 A I add up those numbers to be 903.

4 Q And handing you now Plaintiff's Exhibit 1192 --

5 MR. MUSGRAVE: Your Honor, may I interpose the same  
6 objection with regard to counsel's representation of KB6017 again  
7 as including the number 38 in the tri column as an interference  
8 not reflective of 38 parts per billion of the substance in the  
9 -- same objection I made before.

10 THE COURT: So noted.

11 MR. MUSGRAVE: And it's overruled?

12 THE COURT: It is overruled, yes.

13 Q And directing your attention to Plaintiff's Exhibit  
14 1192 and the second page thereof and to the one, two, third line,  
15 KL8, KL18001 and for that -- and we've mentioned this earlier,  
16 Mr. Park, for that orthochlorophenol crude that was manu-  
17 factured or at least tested in 1983 contained not more than  
18 3.6 parts per billion of the trichlorodibenzo-p-dioxin and 2  
19 parts per billion of the tetrochlorodibenzo-p-dioxin and total  
20 dioxin of 18 parts per billion, is that correct, sir?

21 MR. MUSGRAVE: If I may just have a moment, your Honor,  
22 I've just gotten to Exhibit 1192, and I'd like to just check  
23 this, if I might. What page are you referring to, Mr. Carr,  
24 with regard to --

1 MR. CARR: Page 2.

2 MR. MUSGRAVE: Page 2?

3 MR. CARR: Sample KC18001.

4 MR. MUSGRAVE: And, Mr. Park, did your calculations  
5 again include the 8.5 and 3.6 respectively under Column CL2  
6 and CL3?

7 THE WITNESS: Yes.

8 MR. MUSGRAVE: Again I would object for the same  
9 reasons that those numbers are not reflective of the amounts  
10 as added, and it's a misrepresentation.

11 THE COURT: Overruled.

12 MR. CARR: Mark this exhibit please.

13 (Plaintiff's Exhibit No. 1302 was marked for identi-  
14 fication.)

15 A I know it says --

16 THE COURT: I'm sorry, but there isn't a question  
17 pending, Mr. Park. He will have the opportunity to ask you and  
18 you can say then what you want to say.

19 MR. CARR: Would you mark this please.

20 Q I'm handing you now what's been marked as Plaintiff's  
21 Exhibit No. 1302 and ask you to look at the letter in the  
22 attachments, if you would. Now, Mr. Park, you recognize the  
23 letter that's part of this exhibit to be one that's from the  
24 Department of Health, Education, and Welfare. You recognize

1 that as a branch of the United States Government, don't you,  
2 sir?

3 A Yes.

4 Q And it's that part of that department that's called  
5 the National Cancer Institute, sometimes known as NCI?

6 A It does say that in the upper right-hand corner.

7 Q And do you recognize that as the same NCI that has  
8 been referred to in the May of 1979 TSCA meeting that we have  
9 discussed the past several days?

10 A I would assume it's the same.

11 Q Yes. And Dr. Anne Norberg, what was her position in  
12 1980 with Monsanto, the person to whom this letter is addressed?

13 A I -- I did know her. I cannot recall just exactly  
14 what her position was.

15 Q There is attached to the letter sent to Dr. Norberg  
16 of Monsanto a data sheet concerning T-4 dichlorophenol, is  
17 there not, sir?

18 A Yes.

19 MR. CARR: Offer this exhibit in evidence and ask  
20 the jury -- I'd like to ask the witness some questions about  
21 it while the jury has it, your Honor.

22 MR. MUSGRAVE: Your Honor, we would object on the  
23 basis that the document, which is a letter not from anyone at  
24 Monsanto, but from -- purports to be the Department of Health,

1 Education, and Welfare, first of all, does not involve OCP or  
2 OCP crude. Secondly, there's no foundation for the information  
3 contained on the attachment, constitutes hearsay, we don't know  
4 who prepared it, the basis for the preparation, the gathering  
5 of the information and do not have the opportunity if we would  
6 want to cross examine the author of the document. It's not  
7 offered by Monsanto. We object on that basis.

8 MR. CARR: One of the purposes of this, your Honor,  
9 is to show the knowledge that Monsanto had of the contents of  
10 2,4 dichlorophenol in 1980 and to show that this witness or  
11 at least Monsanto knew that the 2,4 dichlorophenol had the  
12 constituents manufactured by others, at least in the way  
13 described in this exhibit.

14 THE COURT: It will be admitted over objection.

15 MR. CARR: May we then pass it to the jury, if it  
16 please the Court?

17 THE COURT: Yes, you may.

18 (At this time the exhibit was passed to the jury.)

19 Q Mr. Park, you mentioned yesterday or -- and earlier  
20 that the government does test chemicals on its own, that they  
21 have employees or chemists that do that, and that they would  
22 know, because they do have chemists, they would know that 2,4  
23 dichlorophenol does contain dioxin. Do you recall that testi-  
24 mony?

1           A     As I recall the testimony, as I recall I was saying  
2     that I have seen EPA publications that listed processes that  
3     the EPA felt would produce products containing dioxin and  
4     chlorophenols was one of the processes.

5           Q     Now, of course, it depends upon whose product they  
6     are testing as to whether or not they will find or know that  
7     dioxin is in that product, isn't that -- if one company  
8     manufactures chlorinated phenol in a particular process and  
9     dioxins come as a result of that manufacturing process whereas  
10    another company doesn't use that process or uses the same  
11    process but cleans it up and doesn't use things that causes  
12    dioxin, if you test the chlorinated phenol for the company  
13    that manufactures it in a clean method, you would learn --  
14    you would not learn whether or not other companies manufactured  
15    it any way that would produce dioxins, isn't that correct, sir?

16          A     Well now, the publication that I'm recalling --

17          Q     Could you answer the question asked you, Mr. Park.

18          A     I thought you were asking me how the EPA would know  
19    that there was dioxin in a given product.

20          Q     No, I didn't ask you that, Mr. Park. If you would,  
21    please answer the question that I asked you.

22               MR. MUSGRAVE: Object to the question as being a  
23    multiple question with multiple parts.

24               THE COURT: Overruled.

1 A I hope I can recall the thrust of your question.

2 Q Well, let me help you, Mr. Park. If the government  
3 tests the chemical, the 2,4 dichlorophenol made by one company,  
4 they would know the contents of that sample tested as sent by  
5 that company, wouldn't they, sir?

6 A Yes, they would.

7 Q If the government doesn't test the 2,4 dichlorophenol  
8 manufactured by another company and if that other company  
9 doesn't tell the government what dioxin is in its 2,4 dichloro-  
10 phenol, then the government wouldn't know the content of the  
11 second company's 2,4 dichlorophenol, would they, sir?

12 A The government would know that there could be dioxin  
13 present.

14 Q Now would you answer that question, sir. Would you  
15 direct the witness to answer that question. I've broken it  
16 down for him. I've made it simple so that he could understand  
17 it, and he will not answer that question.

18 THE COURT: You're directed to answer the question  
19 as asked to you, Mr. Park.

20 MR. MUSGRAVE: Object. It calls for speculation and  
21 conjecture.

22 THE COURT: Overruled. I don't believe it does.

23 A The answer is yes, the government would know that  
24 there would be some dioxin in that untested shipment of chloro-

1 phenol.

2 Q And where would they get that knowledge, from the  
3 company that manufactured the dioxin?

4 A Because of --

5 Q Excuse me. Where would they get that knowledge?  
6 Would they get it from the company that manufactured the 2,4  
7 dichlorophenol that was not tested and that did not report it?

8 A No, they would get --

9 Q Would they get that knowledge from the samples that  
10 they did test as far as 2,4 dichlorophenol is concerned?

11 A From their own chemists' knowledge of chemical reactions.

12 MR. MUSGRAVE: Your Honor, may my objection continue  
13 to run to this questioning about what the EPA would do or where  
14 they would get information and what they would know as being  
15 pure speculation and conjecture.

16 THE COURT: Overruled, and it will be a continuing  
17 objection. So noted.

18 MR. MUSGRAVE: Thank you.

19 Q You understand, don't you, Mr. Park, that chemists  
20 have testified or gave reports to the government that it would  
21 be impossible for tetra to be in their chlorinated phenol or  
22 in their OC -- strike that. In the orthochlorophenol crude  
23 through the existing processes they knew of at that time?  
24 You do recall that, don't you, sir?

1 A I do not know about that testimony.

2 Q You don't know about that? Directing your attention  
3 to this particular exhibit, the government here according to  
4 this exhibit had a sample of 2,4 dichlorophenol tested, didn't  
5 they, sir?

6 A Yes.

7 Q They did it under contract with a company known as  
8 the Midwest Research Institute, didn't they, sir? --

9 A Yes.

10 Q -- on January 10th, 1979, didn't they, sir?

11 A Yes, apparently so.

12 Q And of course, that January 10th, 1979 is just coin-  
13 cidentally the day that this occurrence took place involved in  
14 this case, but according to that analysis they tested a sample  
15 from Dow Chemical Company, didn't they, sir?

16 A Yes.

17 Q And the analytical data that they used in that test  
18 showed that of the dioxins it did not have -- they could not  
19 detect the tetrachlorodibenzo-p-dioxin down to one part per  
20 billion, isn't that correct, sir?

21 MR. MUSGRAVE: I think it's million, Mr. Carr.

22 MR. CARR: No, that's .001 parts per million, which is  
23 one part per billion.

24 Q Do you see that, Mr. Park, the dioxins, tetrachloro-

1 dibenzo-p-dioxin --

2 A Yeah.

3 Q -- .001 pm, nd, not detected at that level? Do you  
4 see that, sir?

5 A Yes, I do. I do see that.

6 Q Now, in January of 1979 the government, the Health and  
7 Welfare Department, had information relating to 2,4 dichloro-  
8 phenol which stated that the tetradoxin could not be detected  
9 at a level of one part per billion in Dow's chemical, is that  
10 correct, sir, according to this?

11 A Apparently so.

12 Q And at that same time, one month after that, the  
13 tetras in the Monsanto product, there were 487 parts per billion  
14 according to its own test, 2700 parts per billion according to  
15 the University of Nebraska according to Exhibit 1301a, is that  
16 correct, sir?

17 A I see those numbers.

18 Q Mr. Park, isn't what I stated correct, sir?

19 A Yes.

20 Q Mr. Park, now at that time according to the informa-  
21 tion the government had in its file the 2,4 dichlorophenol had  
22 no detectable level of tetras down to one part per billion;  
23 the product being manufactured by Monsanto had 2700 parts per  
24 billion, 2.7 parts per million of dioxin in it. Now would

1 you not say that that is a wide variation between no detectable  
2 dioxin with a detection limit of one part per billion Dow's  
3 product compared to Monsanto's product with 2700 parts per  
4 billion? Would you not say that that is a wide variation in  
5 the dioxin, the tetradoxin content of 2,4 dichlorophenol?

6 A If that number is correct, that is a sizeable variation.

7 Q In the pentachlorodibenzo-p-dioxin, the Dow sample  
8 not detected at one part per billion, hexa not detected at one  
9 part per billion, hepta not detected at one part per billion,  
10 octa not detected at one part per billion, isn't that correct,  
11 sir?

12 A Yes.

13 Q And at the same time the Monsanto product had dioxins  
14 at the level of 50,000 parts per billion of total dioxins,  
15 isn't that correct, sir?

16 MR. MUSGRAVE: Your Honor, I object to this being  
17 represented as the same time. There is no evidence again, which  
18 is part of the reason I objected earlier, there is no evidence  
19 as to when this sample was manufactured. You can't compare  
20 when this sample may have been manufactured as to when a Monsanto  
21 sample may have been manufactured. There's no evidence of that  
22 even in the document, which we have continued to object to.

23 THE COURT: Objection is overruled.

24 A We did add up the numbers for this sample apparently

1 taken at this -- of the dichlorophenol spill to be around  
2 50,000.

3 Q Is it barely possible, Mr. Park, that the government,  
4 the National Institute, the Department of Health, Education,  
5 and Welfare and other branches of the government believed that  
6 since Dow's 2,4 dichlorophenol did not contain 2,3,7,8 TCDD or  
7 tetrachlorodibenzo-p-dioxin or tridibenzo-p-dioxin that they  
8 believed that 2,4 dichlorophenol manufactured by other chemical  
9 companies until notified to the contrary had the same level of  
10 dioxin that Dow had?

11 A I don't think so.

12 MR. MUSGRAVE: Object, speculation and conjecture.

13 THE COURT: Overruled.

14 MR. CARR: Your Honor, I would offer into --

15 A I don't think so, Mr. Carr.

16 MR. CARR: I would offer into evidence Exhibits 1300  
17 and 1301a at this time -- 1301 and 1301a.

18 MR. MUSGRAVE: We would object for all the reasons  
19 previously stated as to the misrepresentations, what we believe  
20 to be misrepresentations and also there's been no identification  
21 as to the source of the information for GATX 12392, the OCP  
22 sample No. 2. Mr. Carr started on that yesterday, but has not  
23 identified where that information came from.

24 MR. CARR: I'm sorry, I wasn't listening. What was

1 it I hadn't identified?

2 MR. MUSGRAVE: GATX 12932.

3 MR. CARR: Oh, all right.

4 Q Exhibit 1142, you see that says GATX 12932?

5 A Yes, I think so.

6 Q Do you see that?

7 A Yes.

8 MR. CARR: That's the OCP that spilled, Mr. Musgrave,  
9 in Sturgeon.

10 MR. MUSGRAVE: I understand that, Mr. Carr. You're  
11 getting that information from what exhibit now?

12 MR. CARR: I'm getting that information from the  
13 Rappe exhibit and the admission of counsel in front of this  
14 jury and from Exhibit 1142.

15 MR. MUSGRAVE: Which one of these are you using, Mr.  
16 Carr?

17 MR. CARR: I'm using the admission of counsel in front  
18 of the jury --

19 MR. MUSGRAVE: Which one of these --

20 MR. CARR: And the Rappe exhibit for the 45 parts per  
21 billion. I'm using Exhibit 1142 for the total dioxin content  
22 adding the 45 in there.

23 MR. MUSGRAVE: And which one of these are you using  
24 for the total dioxin content, which of the three?

1 MR. CARR: The -- see that 210 right there?

2 MR. MUSGRAVE: Umhm.

3 MR. CARR: You see that 210 right there?

4 MR. MUSGRAVE: Umhm.

5 MR. CARR: I'm using that line.

6 MR. MUSGRAVE: And you're adding --

7 A That's says 34 tetra there, doesn't it, not 45?

8 Q But as I -- maybe you weren't listening, Mr. Park.

9 The admission of counsel is that it was 45, the Dr. Rappe  
10 exhibit is that it was 45.

11 MR. MUSGRAVE: I object to the representation that  
12 the admission of counsel was that it was 45. I don't believe  
13 that counsel admitted that it was 45. That's a misrepresentation.

14 MR. CARR: Well, your Honor --

15 THE COURT: I previously ruled that he has.

16 MR. CARR: Maybe Mr. Musgrave wasn't here. The jury  
17 heard it.

18 MR. MUSGRAVE: I've read the opening statement, Mr.  
19 Carr.

20 THE COURT: I heard the opening statement, gentlemen.  
21 I know that it was said. I previously ruled that there was such  
22 an admission of counsel.

23 MR. MUSGRAVE: I'm just continuing to make my record,  
24 your Honor.

1 THE COURT: Right. No, I understand that. I just  
2 wanted to make the record clear on that. I will admit 1301 and  
3 1301a over objection.

4 MR. CARR: Your Honor, I'd like to know from counsel  
5 whether or not it is Monsanto's position that this tank car did  
6 not contain -- if they are still denying that this tank car  
7 contained 45 parts per billion 2,3,7,8 TCDD?

8 MR. MUSGRAVE: Your Honor, I have made an objection  
9 to Mr. Carr's statement as to his representation as to an  
10 admission, and that is my objection.

11 MR. CARR: I'd like to know whether or not Monsanto  
12 is now backsaying that there was not 45 parts per billion  
13 2,3,7,8 TCDD in that tank car?

14 MR. MUSGRAVE: Object to counsel's questioning in  
15 this fashion, your Honor. This is not -- I am not a witness  
16 on the stand. I have made my objection in accordance with the  
17 law, and counsel is now -- are you challenging my objection,  
18 Mr. Carr?

19 THE COURT: All right.

20 MR. MUSGRAVE: It's been overruled, Mr. Carr.

21 THE COURT: Gentlemen, we'll deal with this later.  
22 We'll deal with this later. Mr. Carr, you may proceed.

23 MR. CARR: I have no further questions of this witness,  
24 your Honor.

1 THE COURT: Mr. Musgrave.

2 MR. MUSGRAVE: Thank you, sir.

3 CLARIFICATION

4 BY MR. MUSGRAVE:

5 Q Mr. Park, I'd first like to ask you a question about  
6 this exhibit that Mr. Carr just questioned you about, this  
7 Plaintiff's Exhibit 1302.

8 A Yes.

9 Q Now, is there any indication on there, sir, as to when  
10 that sample that was apparently tested by someone and analyzed  
11 by someone as to when it was manufactured?

12 A No, I don't see a manufacturing date.

13 Q And did you understand Mr. Carr to represent that this  
14 data had been obtained from an analysis done by the Midwest  
15 Research Institute?

16 A Yes.

17 MR. CARR: The exhibit clearly shows, if counsel  
18 isn't aware of it, the data regarding the dioxin content came  
19 from Dow Chemical Company.

20 MR. MUSGRAVE: That's precisely my point, Mr. Carr,  
21 but I believe it was represented by you, Mr. Carr, that this  
22 came from the Midwest Research Institute.

23 MR. CARR: Can't you read, Counsel? It says on the  
24 exhibit --

1 MR. MUSGRAVE: I was under the assumption that you  
2 couldn't read, Mr. Carr, since you have misrepresented it.

3 Q Does it indicate that this data, Mr. Park, came from  
4 the Midwest Research Institute?

5 MR. CARR: It sure does. It came from the Dow --

6 MR. MUSGRAVE: Mr. Carr -- your Honor, may I proceed  
7 with my examination without Mr. Carr testifying or attempting  
8 to testify? You want to get up on the stand and be sworn?

9 THE COURT: I don't believe that's what's happening.  
10 You may proceed with your questioning.

11 MR. CARR: I'll be glad to, Mr. Musgrave.

12 MR. MUSGRAVE: Your Honor, may I proceed without Mr.  
13 Carr interrupting me?

14 THE COURT: I just told you you could proceed.

15 Q Does the document indicate, Mr. Park, that this  
16 analysis was performed by the Midwest Research Institute?

17 A As I would read it, there's a footnote after the  
18 words analytical data, there's a footnote, and down at the  
19 bottom it says data supplied by E. R. Freiter of Dow Chemical  
20 Company, Midland, Michigan in a personal letter to Dr. William  
21 Jameson of Tracor Jitco.

22 Q So it would appear on the face of this that the  
23 analysis was done by somebody at Dow of their own product?

24 A Yes.

1 Q And then sent to Dr. William Jameson of Tracor Jitco,  
2 right?

3 A Yes.

4 Q And is there any information as to what method was  
5 used to analyze this?

6 A Not that I see.

7 Q So this is a report of data by Dow, it's not by an  
8 independent lab of any kind?

9 A Yes.

10 Q And this was reported to -- or purports to be a  
11 letter from the Department of Health, Education and Welfare,  
12 isn't that correct?

13 A That's right.

14 Q Now, is the Department of Health, Education, and  
15 Welfare different than the Environmental Protection Agency?

16 A Yes, two entirely separate independent agencies.

17 Q And the knowledge that HEW may have had from this may  
18 be different from what EPA had?

19 A Yes.

20 Q And do you know that the Department of Health, Educa-  
21 tion, and Welfare doesn't have other knowledge as to the potential  
22 actual content of dioxin, various isomers of dioxin in any  
23 chlorinated phenols, including 2,4 dichlorophenol?

24 A They may well have had additional knowledge.

1 Q You don't know one way or the other, do you, sir?

2 A No, that's right.

3 Q And has Mr. Carr told you that there is any evidence  
4 that he's brought forth in this courtroom to indicate that they  
5 didn't have any such knowledge other than what's in this document?

6 A No.

7 MR. CARR: Your Honor, I object. The burden is upon  
8 the witness. He said and the law requires that EPA have actual  
9 knowledge, and the burden is upon the witness to prove that they  
10 had actual knowledge. It's not upon me to prove the contrary.  
11 The law obligates Monsanto to give information to the EPA unless  
12 Monsanto knows that the EPA has actual knowledge. The burden  
13 is not upon me to prove that they had no knowledge.

14 MR. MUSGRAVE: Well, your Honor, Mr. Carr was permitted  
15 to ask this witness to speculate as to what knowledge the EPA  
16 may or may not have had as well as any other governmental agency  
17 over my objection, and I believe I am entitled to ask him now  
18 whether Mr. Carr or anyone has told him that they did.

19 THE COURT: First of all -- first of all, those  
20 questions that you're referring to I previously ruled were not  
21 speculation. Number two, I think Mr. Carr's statement of the law  
22 that 8(a) and the policy under it are correct. Objection is  
23 sustained.

24 Q Now, Mr. Park, does it indicate on this Plaintiff's

1 Exhibit 1302 that Dow performed any tests for the content of  
2 monos, dis, or tris in the -- of the dioxin isomers?

3 A No, it doesn't.

4 Q And the same would be true as to the furans that are  
5 shown below, would it not?

6 A That's correct.

7 Q Now with regard to Plaintiff's Exhibit 1301, Mr. Park,  
8 this is this chart.

9 A Counsel, can I ask you a question?

10 Q I don't think that's probably appropriate, Mr. Park,  
11 at this point. With regard to 1301, do you have that there,  
12 Mr. Park?

13 A Yes, I do.

14 Q Now the reference to GATX 12932, which Mr. Carr  
15 indicated to you is the tank car that was in question in the  
16 Sturgeon spill, he's got 45 up here under the tetra column,  
17 does he not?

18 A Yes.

19 Q And a total dioxin of 824?

20 A Yes.

21 Q Is that correct?

22 A Yes.

23 Q And I believe he just indicated to you, did he not,  
24 that he got the total dioxin except for the 45 tetra from Exhibit

1 14 -- 1142?

2 A Yes.

3 Q All right. Now, Exhibit 1142 shows 34 parts per  
4 billion, doesn't it?

5 A Yes.

6 Q Under the tetra column, and then a replicate 40 and  
7 41, and down here I think it's 36 and 44, isn't that correct?

8 A Yes.

9 Q And do you know whether analytical chemists when  
10 they do replicates, repeats of the same type sample, and they  
11 get different numbers that are close together, whether they  
12 average those in the regular course of doing analytical work?

13 A I'm sorry, I just don't know.

14 Q All right. But in any event, there's no 45 in this  
15 Column 4, is there?

16 A That's correct, there is not.

17 Q Now, Mr. Carr also questioned you about -- if I can  
18 get this to stay up here -- these samples down here involving  
19 what he has denominated as the DCP, dichlorophenol spill.

20 A Yes.

21 Q Do you recall that?

22 A Yes.

23 Q And asked questions about the EPA's knowledge as to  
24 the dioxin content that may have been reflected by the various

1 testing on those samples from that spill? You recall that,  
2 don't you?

3 A Yes, yes.

4 Q And suggested that the EPA had no knowledge as to  
5 dioxin content involved in that material that may have been  
6 spilled? Do you recall that, sir?

7 A I think so, yes.

8 MR. MUSGRAVE: Do you have Plaintiff's Trial Exhibit  
9 1118, Mr. Carr? Is it up here or do you have it?

10 MR. CARR: Are you asking me if I have 1118?

11 MR. MUSGRAVE: Yes.

12 MR. CARR: To my knowledge I don't.

13 MR. MUSGRAVE: I don't think you've got it there.

14 MR. CARR: If you give me a date or otherwise identify  
15 it, I might be able to help you.

16 MR. MUSGRAVE: It's the Monsanto press release dated  
17 June 8th, 1979 that you put into evidence, Mr. Carr.

18 MR. CARR: Oh, all right. I have our copy of it if  
19 you'd like to use it. It talks about the OSHA -- are you  
20 talking about the OSHA one?

21 MR. MUSGRAVE: Uh-huh. It might speed things up.

22 MR. CARR: Sure.

23 Q Now, handing you what's been marked as Plaintiff's  
24 Exhibit 1118, that's already been identified and introduced into

1 evidence as a press release made by Monsanto with regard to the  
2 spill, and does it not indicate in there that OSHA apparently  
3 took a -- or claims to have taken a portion of a spilled  
4 material and had a finding of 300 parts per billion of dioxin?

5 MR. CARR: Counsel, so the record can be correct,  
6 that's not a press release. That's a release to the employees  
7 of Monsanto Krummrich plant.

8 MR. MUSGRAVE: Well, I have it in a press release form,  
9 too, Mr. Carr, if you want to see it.

10 MR. CARR: I know that.

11 MR. MUSGRAVE: You've already put that in evidence  
12 too.

13 MR. CARR: I know that, but this is not a press  
14 release. This is what the employees were told.

15 Q This was put out publically to the employees though?

16 A Yes, apparently right.

17 Q And there was a press release to the same effect, Mr.  
18 Park. Did you know that?

19 A I don't recall that.

20 Q And in any event OSHA had this information, didn't  
21 they?

22 A Yes.

23 Q And the information that OSHA reported to Monsanto  
24 was made public to its employees?

1 A Yes.

2 Q And was part of a press release, wasn't it?

3 A Yes.

4 Q Now do you suspect that OSHA, if they had some knowl-  
5 edge about their being 300 parts per billion of dioxin in that,  
6 that this might have been something that they would have passed  
7 on to the EPA or the EPA would have had available to them  
8 through these public announcements?

9 A It's --

10 MR. CARR: 300 parts per billion of tetra, not total  
11 dioxin, Counsel.

12 MR. MUSGRAVE: Mr. Carr, I understand that. I didn't  
13 say --

14 MR. CARR: Well, you said dioxin though. You didn't  
15 say tetradoxin, you said dioxin.

16 MR. MUSGRAVE: Your Honor, may I proceed with my  
17 examination? Do you have an objection to make, Mr. Carr?

18 MR. CARR: I do.

19 THE COURT: I think his objection is well taken.  
20 Could you rephrase the question?

21 MR. MUSGRAVE: My statement, your Honor, was 300 parts  
22 per billion of dioxin.

23 MR. CARR: That's correct, and the reference is to  
24 tetra.

1 MR. MUSGRAVE: And you're directing me that I must say  
2 tetra? Is that correct, your Honor?

3 THE COURT: That is correct. I think that's accurate.

4 Q 300 parts per billion of tetra. Now, do you under-  
5 stand that was made public as we just previously discussed?

6 A If I'm misreading this third paragraph or does it  
7 say 50 percent of the dioxin detected was --

8 Q Yes, it says 50 percent was 2,3,7,8.

9 MR. CARR: That's correct.

10 A Yeah, okay.

11 MR. MUSGRAVE: Now, I don't believe that this press  
12 release, your Honor, says that 300 parts per billion is all  
13 tetra. It says that 50 percent of the dioxin detected was  
14 2,3,7,8. Now, do you have some other information, Mr. Carr,  
15 where it says that the 300 parts per billion they're talking  
16 about is all tetra?

17 MR. CARR: Yes, we have exhibits in evidence to that  
18 effect.

19 MR. MUSGRAVE: Well, it really doesn't make any dif-  
20 ference, as you say, Mr. Carr, because it doesn't. My point  
21 is this, Mr. --

22 MR. CARR: Just so the record is straight.

23 Q My point is this, Mr. Park. The information about  
24 300 parts per billion of dioxin, and let's for the moment say

1 it is tetra, was made public, wasn't it?

2 A Yes.

3 Q And OSHA at least felt they knew about it, didn't  
4 they?

5 A Yes.

6 Q Now, do you suspect that OSHA would have passed this  
7 information on to the EPA if they felt it was of some signi-  
8 ficance?

9 A They certainly could have.

10 Q And do you feel that it is in fact possibly that the  
11 EPA would have seen this information some place or been made  
12 aware of this information that was made public?

13 A It certainly is.

14 Q Now do you know whether the EPA -- well, let me  
15 rephrase that. Mr. Carr asked you about the EPA coming in and  
16 stopping shipments and that type of thing. You remember him  
17 examining you about that, saying that the EPA had the power or  
18 did they have the power to come in and stop shipments and  
19 wouldn't they stop shipments if they felt that there was a  
20 hazardous level of a chemical in, let's say, that met the  
21 requirements, the reporting requirements of Section 8(e) that  
22 we've been talking about, that they would come in and stop that  
23 shipment? Do you recall him asking you about that?

24 A Yes.

1 Q Now do you know whether the EPA ever come in and stop  
2 a shipment from the Krummrich Plant of its chlorinated phenols?

3 A It's never happened as far as I'm aware.

4 Q To your knowledge? Now, I don't want to spend a lot  
5 of time going through these various samples that Mr. Carr put  
6 up on Plaintiff's Exhibit 1301, Mr. Park, but you did recognize  
7 when you went through these that in many instances there was  
8 more than one analysis of a sample, there was sometimes three  
9 or four analyses, is that correct?

10 A That's right.

11 Q And were you able to tell whether Mr. Carr was taking  
12 the highest analysis when he would select one of these to put  
13 up on the board?

14 A Yes, I noticed that when there were more than one  
15 analysis of a given sample, that he selected that that resulted  
16 in the highest total number of dioxins.

17 Q And do you know anything, Mr. Park, about interferences  
18 and how that word is used by analytical chemists in connection  
19 with reporting their data when they analyze something with the  
20 GCMS and those types of analytical methods that they use?

21 A My knowledge is fuzzy. I think that it means that  
22 the analysis is difficult, because other -- I just don't know  
23 that much about it.

24 Q All right. You just don't know what that means. All

1 right. Now, Mr. Park, in regard to that tank car spill sample,  
2 the one that we're talking about, GATX 12932 --

3 A Yes.

4 Q Now you, of course, know that the total tetra content  
5 that Monsanto discovered in its analysis of that reserve sample  
6 was reported to the EPA?

7 A I think that's right.

8 Q And are you aware of the fact that the EPA was also  
9 given samples at their request of the reserve sample from the  
10 tank car?

11 A I think I can -- I recall that, yes.

12 Q And they did their own testing or had someone at  
13 their request do their own testing, if you will, on those  
14 portions of the reserve sample?

15 A I can remember that there was quite a bit of contact  
16 with the EPA, and as I recall, sharing of information.

17 Q And the EPA would have been well able, had they wanted  
18 to, or had there been any concern in their mind, to test for  
19 total dioxin content, not only for tetras, isn't that correct,  
20 sir?

21 A Yes.

22 Q And do you know whether they did or they didn't?

23 A I just don't remember.

24 Q Okay. In connection with that sample testing did EPA

1 to your knowledge after they had done their own testing for  
2 whatever -- by whomever they selected and got whatever results  
3 they felt were significant, to your knowledge did they stop  
4 Monsanto from selling in commerce OCP crude?

5 A Not to my knowledge.

6 Q Now, Mr. Park, coming back to the topic of these Section  
7 8(a) meetings. Now your role in those meetings was what, sir?

8 A I would advise the group on what the law said, what  
9 the law required, and I kept minutes of the meeting, and that's  
10 about it.

11 Q All right. You would advise the other members of the  
12 committee as to your interpretation of the law as a lawyer?

13 A That's right.

14 Q And apply it to the factual information that you were  
15 given and the opinions that you were given by the others with  
16 regard to certain facts?

17 A Yes.

18 Q And you also kept the minutes, I think you said?

19 A Yes.

20 Q All right. Now, you I think we've already established,  
21 are not formerly educated in chemistry or toxicology or medicine,  
22 isn't that correct, sir?

23 A That's correct.

24 Q Now in keeping these minutes would you rely upon your

1 ability to understand and take down what was said at the meetings  
2 to type up the minutes?

3 A I relied on what others said at the meeting.

4 Q I understand that.

5 A Yeah.

6 Q But when you sat down to type up the minutes or have  
7 typed up the minutes of the meeting, would you rely upon your  
8 ability to accurately recall and record in note form exactly  
9 what was said, the way it was said by these people that have  
10 the expertise in these areas that you didn't?

11 A No.

12 Q All right. Well, when you typed up these minutes,  
13 what would you do then?

14 A I would, of course, I took notes during the meetings  
15 and then my practice was and is to -- I would type up what I  
16 felt I remembered and what my notes indicated about the meeting  
17 and circulate that to others, to everyone else who had attended  
18 the meeting. Those individuals then would make appropriate  
19 corrections where I had misstated something or where I had perhaps  
20 not fully understood something that one of the experts, if you  
21 will, had stated. They would correct the minutes, send them  
22 back to me, and then I would incorporate all those corrections  
23 and then publish the minutes in final form.

24 Q All right, sir. And as a matter of fact, do you have

1 Plaintiff's Exhibit 1298 up there, sir?

2 A No, I don't.

3 Q Well, let me see if I can't find it. (Pause)

4 Handing you what's been previously marked as Plaintiff's Exhibit  
5 1298, that is a copy on the top of your notes from the November  
6 24, 1981 meeting, is that right?

7 A That's correct.

8 Q And the next two pages of that exhibit are your hand-  
9 written notes from which you would have prepared your first  
10 draft, if you will?

11 A Yes.

12 Q And the last page of the exhibit, sir, is a memorandum  
13 from Clayton Callis to you dated December 18th, 1981?

14 A Yes.

15 Q And does it not contain a suggestion for a change in  
16 the way you reported the information, Paragraph 3?

17 A Yes.

18 Q And that information, Paragraph 3, is technical in  
19 nature and deals with toxicity and things that you don't have  
20 any expertise in, is that correct?

21 A That's right.

22 Q And in fact, did you amend your first draft to reflect  
23 the changes that -- is it Dr. Callis or is that Mr. Callis?

24 A I think it's Dr. Callis.

1 Q That Dr. Callis had suggested?

2 A Yes.

3 Q And Dr. Callis, was he a member of this committee at  
4 that time?

5 A Yes, he was the Director of Environmental Operations.

6 MR. CARR: This is already an exhibit, Counsel. It's  
7 already in evidence.

8 MR. MUSGRAVE: Which one is it, Mr. Carr?

9 MR. CARR: December 14th, 1981.

10 MR. MUSGRAVE: You want to give me the exhibit  
11 number?

12 MR. CARR: Oh, you want -- that's the one you're  
13 just referring to, 1298.

14 MR. MUSGRAVE: I'm sorry, Mr. Carr, it's different.

15 MR. CARR: They're exactly the same, Counsel, exactly  
16 the same.

17 MR. MUSGRAVE: Let me be sure, Mr. Carr. The exhibit  
18 I have that you have marked that you gave me is this one right  
19 here, Document C03528. That's what you marked as Plaintiff's  
20 --

21 MR. CARR: The other one is there as well, Counsel.  
22 I had it marked first and then I handed in the one with the notes.

23 A This would have been my first draft.

24 MR. MUSGRAVE: Yes, yes.

1 Q Plaintiff's Exhibit 1298 is your first draft, is it  
2 not?

3 A Yes.

4 Q All right. And attached to it are the notes of Dr.  
5 Callis suggesting a change to the third paragraph dealing with  
6 toxicity, isn't that correct?

7 A Yes.

8 Q And Defendant's Exhibit 882, which I now hand you,  
9 can you identify that, sir?

10 A Yes. This would be the final draft of minutes of the  
11 November 24, 1981 meeting incorporating comments received from  
12 Dr. Callis and others.

13 Q All right. Now that's an example of the type --  
14 or example of the process that you went through to ensure that  
15 your note taking accurately reflected what you took down since  
16 you didn't have the expertise and background, is that correct,  
17 sir?

18 A Yes.

19 Q Now, this committee that was constituted when someone  
20 would report their belief that there might be a chemical or  
21 mixture of chemical that would present a substantial risk of  
22 injury to health or the environment under 8(a) was comprised  
23 of what persons?

24 A The committee or group or whatever itself had three

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1 persons that were part of it. One was the Director of our  
2 Medical Department, Dr. Roush to provide the medical input, the  
3 other would be the appropriate Director of Environmental Opera-  
4 tions. This would be a Dr. Callis with one part of the company,  
5 it would be other individuals with other parts.

6 Q Now when you say appropriate director, why do you say  
7 appropriate? Would that person change sometimes?

8 A Yes, yes.

9 Q Why would there be a change?

10 A It would depend upon the product or the material in  
11 question. The company is divided up into now four basic  
12 operating units, each one of which has a Director of Environ-  
13 mental Operations function, and so depending upon the substance  
14 or the material in question the DEO or Director of Departmental  
15 Operations for the part of the company that either manufactured  
16 or used that product would be part of the committee. So that  
17 function would always be part of the group, but the individual  
18 would change depending upon the product being considered.

19 Q All right.

20 A And the third person would be myself to provide the  
21 legal interpretations.

22 Q If I understand what you're saying, that the different  
23 products of the company came under the jurisdiction and responsi-  
24 bility of different directors of Environmental Operations?

1 A That's correct.

2 Q Not one person had all that responsibility for all  
3 the products?

4 A No, that's right.

5 Q So depending upon the product that was the subject  
6 of the 8(e) meeting, you would either have one or the other?

7 A Yeah. There would be two individuals who would be  
8 the same for all meetings with very rare exceptions. That  
9 would be the Director of our Medical Department and myself.

10 Q All right. And that Director of the Environmental  
11 Health -- specifically Director of Medicine or Environmental  
12 Health, that's Dr. Roush?

13 A That's correct.

14 Q Now the composite of that committee was established  
15 by Monsanto's written policy, I believe, that's Defendant's  
16 Exhibit 881, and may have been established before that, but in  
17 any way it was reannounced in Defendant's Exhibit 881. Do you  
18 have that there, sir?

19 A Yes, here it is.

20 Q Handing you what's now been marked or previously been  
21 marked as Defendant Monsanto's Exhibit 881 you would recognize  
22 that, sir, as the --

23 A Yes.

24 Q -- policy statement establishing or at least reaffirming

1 the committee organization you have just testified to as con-  
2 stituting an 8(e) committee?

3 A That's correct.

4 Q And that organization to set that committee up to  
5 review matters brought by anyone to them when a person felt  
6 there might be a chemical or mixture of chemicals that would  
7 -- of the type that should be reported under 8(e), was that  
8 set up in accordance with the policy statement of the EPA?

9 A Yes.

10 Q As set out in Defendant's Exhibit 880?

11 A Yes.

12 Q And I believe you've got 880 there in front of you,  
13 have you not, sir?

14 A Yes, that's correct.

15 Q All right.

16 A Actually, as I recall, this organization or this  
17 little group was more or less established just prior to the  
18 publication of the policy. In other words, to assure compliance  
19 with the statute.

20 Q All right.

21 A But then it was -- this type of information here is  
22 -- something similar to this is published annually in an  
23 effort to make sure that employees are kept knowledgeable about  
24 our obligations under Section 8(e).

1 Q All right, sir. Now you mentioned that the policy  
2 provides for three persons, yourself, the head of the Department  
3 of Health and Environmental Medicine, and the respective Director  
4 of Environmental Operations depending upon the product?

5 A Yes.

6 Q Now we have seen, Mr. Park, at these meetings other  
7 people though in attendance. Now could you tell us why, if the  
8 committee is three, on several occasions we have seen other  
9 people in attendance at these meetings?

10 A Yes. On occasion Dr. Roush or -- and/or the DEO  
11 would provide other people who they felt might have some knowl-  
12 edge or expertise or whatever that would be of use during the  
13 meetings.

14 Q All right. So just to add additional information or  
15 knowledge if thought to be necessary in a particular situation  
16 to the meeting?

17 A That's correct.

18 Q Now, with regard to Dr. Roush, do you have specific  
19 knowledge, sir, of his educational background and the type of  
20 courses he took, the type of degrees that he got, do you have  
21 any specific knowledge in that regard?

22 A I really don't have the specific knowledge as to the  
23 details of his background.

24 Q He is a doctor, you know that?

1 A He is an MD, yes.

2 Q Do you know where he has spent the better part of his  
3 professional career, in what area, specifically?

4 A I do know that he has -- he has been a Professor  
5 in a university, also had experience in, I think, in functions  
6 somewhat similar to what he holds with Monsanto prior to his  
7 coming with the company.

8 Q All right. But beyond that you're not -- you don't  
9 have a lot of specific knowledge about what he did and when he  
10 did it and exactly what his background and specific training  
11 and experience had been or was?

12 A No, I have never read his resume' in other words.

13 Q Okay. Now at these meetings that you did though  
14 attend with Dr. Roush did he display to your mind as a layman  
15 knowledge about the toxicity of various chemicals?

16 A He's always appeared very knowledgeable about toxicity.

17 Q Do you know what a clinical toxicologist is, Mr. Park?

18 A I'm not sure that I do.

19 Q Do you know what an experimental toxicologist is?

20 A No, I don't.

21 Q Do you know or have you ever heard anyone talk about  
22 Dr. Roush being a clinical toxicologist and having practiced in  
23 that for many years? Anybody ever say that to you that you can  
24 recall?

1 A Not that I can recall.

2 Q All right. Now at these meetings and specifically a  
3 couple of these that Mr. Carr showed you, there was reference  
4 to in your minutes that you prepared trace levels. Do you  
5 recall Mr. Carr asked you about that? Now, I know that you're  
6 the one that copied down the notes and you're the one that had  
7 the notes typed up, but when the word trace levels was used in  
8 these notes, were those words that you spoke at the meeting to  
9 the best of your knowledge?

10 A No.

11 Q Or are those that the people, the toxicologists and/or  
12 the people from the Medical Department spoke?

13 A These would be words coming from the more technically  
14 educated and oriented individuals.

15 Q And the context in which they used them would be best  
16 known by them, I take it, than it would be by you, Mr. Park?

17 A That's correct.

18 Q And again with regard to levels were any of these  
19 meetings to the best of your recollection or the review of your  
20 notes -- I know that you said that you have very little, if  
21 any, recollection of most, if not all of these meetings except  
22 what's contained in these notes, is that correct?

23 A Yes.

24 Q But do any of these meetings reflect, sir, that the

1 purpose of the meeting was to try for any particular chemical  
 2 or compounds that Monsanto was manufacturing, to try and set a  
 3 level with regard to that compound or a constituent, a component,  
 4 an impurity in that compound that would be considered safe?

5 A Oh, no. The purpose of the meeting was solely to  
 6 determine whether an obligation existed under Section 8(e), a  
 7 reporting obligation.

8 Q With regard to a particular chemical that was brought  
 9 to you by someone?

10 A That's right.

11 Q And beyond that chemical and the discussions that were  
 12 had about it and its levels there wasn't any attempt to say,  
 13 well, gee, how high can you go or how low should you go or any-  
 14 thing like that?

15 A No.

16 Q Now --

17 THE COURT: Before you get into another subject, is  
 18 this a good point for a short break?

19 MR. MUSGRAVE: Yes, I think it is, your Honor.

20 THE COURT: Ladies and gentlemen, we'll take a short  
 21 recess at this time. I would remind you, and this would go for  
 22 any other recesses that we might take during the day, that you  
 23 are not to discuss this matter among yourselves or with anyone  
 24 outside the jury panel or as of yet form any opinions or con-

1 clusions about the matters on trial. Court's in recess.

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

3 PHOCION PARK,

4 resuming the witness stand, having been previously sworn,  
5 testified further as follows:

6 CLARIFICATION (Continued)

7 BY MR. MUSGRAVE:

8 Q Mr. Park, when we broke, I think we were talking  
9 about the organization of the 8(e) committee, and I want to  
10 continue to pursue that, but before I do so, I'd like to come  
11 back a minute to Plaintiff's Exhibit 1302 that I started out  
12 questioning you about originally. That's the letter with the  
13 attached report of the Dow analysis of its own 2,4 dichlorophenol.  
14 I asked you some questions about that earlier. Do you recall?

15 A Yes.

16 Q I had one other question to ask you. If you would  
17 turn to the third page of that Exhibit 1302, where they're  
18 describing at the top of the third page there the manufactured  
19 data, company, they give the name of the company, the size of  
20 the sample and the lot number and the batch number. You see  
21 that?

22 A Yes, umhm.

23 Q And then the next item says purity.

24 A Yes.

1 Q And then it says, "Special lab distilled lot by  
2 manufacturer."

3 A Yes.

4 Q Now, do you know, sir, then whether or not this  
5 sample of 2,4 dichlorophenol that Dow analyzed was right out  
6 of its production run or was it something special that was done  
7 in the lab?

8 A It would appear from that wording that this was a  
9 special batch of material produced in the laboratory in order  
10 to achieve a higher degree of purity.

11 Q And it uses the word distilled?

12 A Yes.

13 Q Now do you know whether Dow routinely distilled its  
14 2,4 dichlorophenol?

15 A I do not know.

16 Q Do you know if it did whether the distillation that  
17 it used in the actual production of the 2,4 dichlorophenol was  
18 any different than the distillation that apparently was done  
19 in the lab as some type of a special lab distillation?

20 A I don't know.

21 Q Now, coming back again then to the 8(e) committee  
22 and its organization. I think we talked a bit about the members  
23 of it and how other people come to be present at the meetings.  
24 Let me ask you, sir, you've told us that your role is one of --

1 other than the minute taker and whatever -- applying the law  
2 as you understand it to the information that is gathered there  
3 at the meeting from the toxicologist and medical people, is that  
4 correct?

5 A That's right.

6 Q Now do you or to your knowledge do you recall ever  
7 having expressed an opinion of a toxicological or a medical  
8 nature?

9 A No.

10 Q You don't have the background or the expertise for  
11 that?

12 A That's correct.

13 Q Now at these meetings, sir, do you recall at any  
14 meeting that you can recall a portion of or do you recall if  
15 your notes reflect that there was ever any disagreement on any  
16 point, a major point, let's say, of any of the people that  
17 attended these meetings?

18 A I cannot recall any disagreement as to the final  
19 conclusion of an 8(e) meeting.

20 Q All right.

21 A There has been discussion of some of these technical  
22 issues during meetings.

23 Q All right. And if there were a disagreement, still  
24 some conclusion would have to be reached?

1 A Yes.

2 Q And depending upon the nature of the disagreement and  
3 the person that might be disagreeing, let's say, with the rest  
4 of the group, one might look at the education, the experience,  
5 the training of those agreeing as opposed to those disagreeing  
6 to come to a conclusion?

7 A Yes.

8 Q And in such a situation then if there was a conclusion  
9 that was not the same as those that -- of some opinions, there  
10 would be then -- there would be a situation where you would  
11 not be following the advice of at least one person on that  
12 committee or that may have come as an invitee to talk?

13 A Yes, that's true.

14 Q Now, Mr. Carr asked you, you recall, in your exami-  
15 nation about whether you would believe a Monsanto toxicologist  
16 that told you that a certain level ought to be reported to the  
17 EPA. Do you recall that? Oh, I'm sorry, he didn't really ask  
18 you that. As I recall, he said whether a particular level of  
19 dioxin was hazardous.

20 A Yes, I recall that.

21 Q And you said if a Monsanto toxicologist told me that,  
22 I'd believe it. Now that was in the context of one on one,  
23 wasn't it?

24 A Oh, yes.

1 Q Now, in the context of an 8(e) meeting if you had a  
2 variety of opinions, and there was a consensus that clearly  
3 carried the day, then that's not the same situation that Mr.  
4 Carr posed to you --

5 A No.

6 Q -- when you answered that question, is it?

7 A No, not at all.

8 Q Now, I'd like to get into, sir, the statute and the  
9 policy that Mr. Carr questioned you quite extensively about  
10 certain sections of it, and I want to ask you some questions  
11 about other sections of it. Do you have Defendant's 880 in  
12 front of you there, sir?

13 A Yes, I do.

14 MR. MUSGRAVE: All right. Your Honor, Mr. Carr has  
15 shown sections of this to the jury in connection with his exami-  
16 nation, and I would request permission to pass Defendant's 880,  
17 which is the entire policy statement, to the jury.

18 THE COURT: Go right ahead.

19 MR. MUSGRAVE: So they can follow along with other  
20 sections I want to show them. Do you have a copy, Mr. Carr?

21 MR. CARR: Yes.

22 MR. MUSGRAVE: Your Honor, do you have a copy?

23 THE COURT: I have 880, yes, thank you.

24 (At this time the exhibit was passed to the jury.)

1 Q Now, first of all, Mr. Park, Defendant's 880 is a  
2 statement policy as opposed to a regulation, is that what I  
3 understand to be the case?

4 A That's correct.

5 Q And directing your attention to the first page of  
6 this, the first column on the left under the heading there,  
7 Supplementary Information --

8 A Yes.

9 Q Does it indicate being a policy statement what pro-  
10 cedures apply and don't apply as to the review of this policy  
11 statement and how it's promulgated or how it's put out?

12 A Yes, it was published so as to be exempt from notice  
13 and public comment provisions of the Administrative Procedures  
14 Act.

15 Q So it is -- being a policy is exempt from the notice  
16 and public comment provision of the Administrative Procedure  
17 Act?

18 A Yes.

19 Q What does that mean, Mr. Park?

20 A It means that it was published merely as -- well,  
21 as just a policy statement by the EPA. It's unenforceable. It  
22 does not have the force of regulations or rules. In order to  
23 achieve, to be a regulation or a rule, the provisions of the  
24 Administrative Procedures Act would have to be followed, which

1 gives all interested parties a right to participate in the  
2 development of the rule, to present witnesses and to cross  
3 examine other witnesses, make presentations and so forth.

4 Q All right. To take issue, if you will, with the EPA's  
5 interpretation of the law through a rule making process?

6 A That's right. And also if it had been published as  
7 a rule, then there would have been the opportunity for challenge  
8 again following regular appeal procedures.

9 Q So in the regular rule making process if the EPA were  
10 to disagree with someone that appeared in connection with this  
11 notification procedure to want to have a say as to what they  
12 believe the rule ought to be and interpretation of the statute,  
13 that if the EPA nonetheless went ahead and passed the rule,  
14 then this person would have the right to actually through a  
15 judicial process or administrative process of some kind appeal  
16 that and have somebody else look at it and see if the EPA was  
17 right?

18 A That's right.

19 MR. MUSGRAVE: Before we go on, I'm sorry, I didn't  
20 give you all enough there. I've got another one there.

21 (Mr. Musgrave handing exhibit to juror.)

22 Q And in fact, in this exhibit despite the fact that at  
23 the very top there of the first column on the left it talks  
24 about statement or it states after the word action statement

1 of interpretation and enforcement policy there in the explanation  
2 in the second column there, the middle column there on the first  
3 page, does it more accurately describe what the EPA is saying  
4 this is, sir?

5 A Yes.

6 Q And what does it say, sir?

7 A The EPA wording is it says, "This document is now  
8 described more accurately as a 'policy statement'".

9 Q And then continues on by saying it is exempt from the  
10 notice and public comment provisions of the Administrative Pro-  
11 cedure Act as well as provisions concerning delayed effective  
12 dates?

13 A Yes.

14 Q All right. So it states in its body that it is more  
15 accurately described and is now described accurately as a  
16 policy statement?

17 A That's correct.

18 Q Now, the statute itself though from which this policy  
19 statement is made by the EPA is recited in Defendant's Exhibit  
20 880, is it not, sir?

21 A Yes.

22 Q First column there on the left of Page 1?

23 A Yes, it is.

24 Q All right. And this has been read, I know, several

1 times, but I would like you to read it again, if you would, to  
2 the jury, sir.

3 A Section 8(e) consists of just one sentence, which  
4 reads "Any person who manufactures, processes, or distributes  
5 in commerce a chemical substance or mixture and who obtains  
6 information which reasonably supports the conclusion that such  
7 a substance or mixture presents a substantial risk of injury  
8 to health or the environment shall immediately inform the  
9 administrator of such information unless such person has actual  
10 knowledge that the administrator has been adequately informed  
11 of such information."

12 Q All right, sir. Now, that is the extent of the  
13 statute, is it not?

14 A That's it.

15 Q And the rest of this document, Defendant's Exhibit  
16 880, is the policy statement?

17 A That's right, issued by the EPA.

18 Q Now the statute is the law as things stand right now?

19 A That's correct.

20 Q And if someone disagrees with the policy statement,  
21 and the EPA believes that they're not interpreting the policy  
22 of the EPA -- pardon me -- if someone disagrees with the  
23 EPA's policy statement, believes the statute is really inter-  
24 preted in some other fashion, the EPA can challenge that person's

1 interpretation, can they not?

2 A Right, the EPA could file a complaint.

3 Q Or if a person disagrees with some action the EPA  
4 might take because the EPA believes they violated the policy  
5 statement, then that person could take action against the EPA  
6 in some fashion?

7 A I guess -- I guess it would be possible, but it  
8 would be up to the EPA to take action if it felt someone had  
9 violated Section 8(e).

10 Q Yes. What I'm saying is if the EPA took action  
11 against someone saying you violated our policy statement, that  
12 person would be permitted to take some action saying well,  
13 you're wrong about what we think the law says. Just because  
14 you say that's what it says, it's only policy and we're  
15 entitled to find out what the courts say and administrative  
16 law judges say about it.

17 A Oh, yes. I think probably the obligation, the burden  
18 would be on the EPA as in any other allegation of violation to  
19 show that someone had -- was in violation of Section 8(e).

20 MR. CARR: Your Honor, so the jury won't be mislead,  
21 I don't think counsel did it on purpose, but he suggested that  
22 if the EPA believed that somebody disagreed with its interpre-  
23 tation of the law, that it's up to the EPA to challenge that  
24 person's interpretation. Of course, that is not the law. The

1 EPA is under no such obligation to challenge anyone's interpreta-  
2 tion. The EPA's obligation is to prosecute violations of the  
3 law that they learn of, and they have no right to file suit or  
4 to challenge my interpretation of the law or Monsanto's inter-  
5 pretation of the law, and I'd like the jury to understand that,  
6 because counsel suggested and the witness agreed that if the  
7 EPA didn't like the way Monsanto was interpreting the law, that  
8 the EPA could file suit against Monsanto and challenge them,  
9 and of course, that is not the law.

10 MR. MUSGRAVE: If I suggested that, I only meant to  
11 suggest, your Honor, through actions that Monsanto might take  
12 that the EPA would say you are in violation of their policy,  
13 and then they would pursue it.

14 THE COURT: I agree with it with that addition, be-  
15 cause the interpretation would have to be evident in an action  
16 that someone took.

17 MR. MUSGRAVE: Well, I meant --

18 THE COURT: It couldn't be just --

19 MR. MUSGRAVE: Certainly. I agree totally. I  
20 certainly meant to infer that, if I didn't, then it has been  
21 clarified.

22 THE COURT: I believe it has been clarified now.  
23 Thank you.

24 MR. MUSGRAVE: All right.

1 Q The point being, Mr. Park, that -- well, strike  
2 that. Now, in the course of Mr. Carr's examination of you I  
3 thought I heard you mention at one time something about their  
4 being no judicial or administrative law interpretation of this  
5 statute.

6 A That's correct, there have been none.

7 Q There have been no --

8 A Not --

9 Q Action that the EPA has challenged that have gone  
10 to court to see whether an action did or didn't violate the  
11 law and the policy or interpretation of the EPA?

12 A Insofar as 8(e) is concerned.

13 Q Yes.

14 A Other EPA action under other provisions of the Toxic  
15 Substance Control Act have been taken, a few other provisions.

16 MR. CARR: Your Honor, the jury may be mislead. The  
17 fact is that no one has been prosecuted by the EPA under the  
18 criminal provision of this act that required an interpretation  
19 of the act. It's not that the -- and counsel is again, I  
20 think, misleading the jury. There has to be -- the EPA has  
21 to know that someone has violated the act and has to decide  
22 that it's a violation worthy of prosecution. They have to have  
23 the knowledge, and they have to decide to bring a criminal  
24 action against that person that is violating the law. I think

1 that should be made clear.

2 MR. MUSGRAVE: All I am indicating, your Honor, is  
3 that there are no judicial interpretations of this statute that  
4 this witness is familiar with.

5 A Could I --

6 THE COURT: Fine. Then I think it should be clarified  
7 like that, and I think the clarification makes it clearer for  
8 the jury and on the record. You may continue, Mr. Musgrave.

9 A Can I finish the answer that I was --

10 Q Yes, you may finish.

11 THE COURT: Oh, I didn't realize you hadn't finished  
12 your answer.

13 THE WITNESS: No.

14 THE COURT: Go ahead.

15 A As I was going to say, let's see, the statute was  
16 adopted, as I recall, in October, 1976 effective January 1 of  
17 '77, and during the period since then there have been only two  
18 complaints issued by the EPA alleging violation of Section 8(a).  
19 One of these was several years ago against American Cyanamid,  
20 and the second was very recently, just a month or two ago  
21 against Union Carbide. The first one was not contested. The  
22 second one is in such an early stage here that it's not known  
23 yet what's going to happen.

24 Q All right.

1           A     But there has been no judicial interpretation of  
2     Section 8(e).

3           Q     Getting back to the statute though itself, you as a  
4     lawyer and in simply reading this statute and maybe even as a  
5     layman from the plain language of it where it talks about any  
6     person who manufactures, processes or distributes in commerce  
7     a chemical substance or mixture, and then it states, and who  
8     obtains information which reasonably supports the conclusion  
9     that such substance or mixture presents a substantial risk of  
10    injury to health or the environment, and then it says, shall  
11    immediately inform the administration of such information,  
12    what information do you read that in this plain language of the  
13    statute to be being talked about, sir?

14          A     It would be information indicating a substantial risk  
15    of injury.

16          Q     Information which reasonably supports the conclusion?

17          A     Yes.

18          Q     That the mixture, the chemical or the mixture --

19          A     Presents a substantial risk.

20          Q     -- presents a substantial risk of injury to the health  
21    or the environment?

22          A     Right.

23          Q     Now -- And then it's that information that supports  
24    that conclusion that has to be reported, sir?

1 A That's correct.

2 Q Unless the EPA already has that information?

3 A That's right.

4 Q Now so the question is what is that information as  
5 set out in the statute that supports this conclusion, is that  
6 right?

7 A That's right.

8 Q Now if you had a tank car, sir, that was filled with,  
9 let's say, 2,3,7,8 TCDD and you notified the EPA that you had  
10 a tank car that was filled with 2,3,7,8 TCDD and you told them  
11 nothing more, sir, would that in and of itself be information  
12 that supports the conclusion that the substance or mixture  
13 presents a substantial risk of injury to the health or the  
14 environment?

15 A I don't think that would be sufficient.

16 Q That the EPA didn't know about, let's put it that way.

17 A Umhm.

18 Q Your answer, sir?

19 A I think that something more would be required.

20 Q Maybe that's an over dramatization, but the information  
21 then is what do you know about the effects of this product that  
22 make it cause a substantial risk of injury to health or the  
23 environment?

24 A Yes, what are the health effects.

1 Q All right. Now then turning to the policy and the  
2 EPA's interpretation of this statute, I'd like to direct your  
3 attention, first of all, to the third column on the first page  
4 down there at the bottom under Item No. IV. It states "Numerous  
5 commentors requested clarification of different aspects of  
6 Part IV of the September 9 proposal." Was there an earlier  
7 proposal of a policy that had been commented on?

8 A Yes. Is that Part V?

9 Q Yes, Part V, I'm sorry, Roman numeral V.

10 A I think there was an earlier publication where the  
11 EPA did ask for some comments and some were made.

12 Q And that Part V they then identified by putting it  
13 in parenthesis and it says, that being information which  
14 reasonably supports a conclusion of substantial risk?

15 A Yes.

16 Q And they go on and say particularly concerning environ-  
17 mental effects and suggested different interpretations of what  
18 constitutes a substantial risk, and then it states, does it not  
19 sir, "The agency continues to focus in this policy statement  
20 on the effects set forth in the September 9 proposal, but  
21 clarifies that the substantiality of a risk is a function of  
22 both the seriousness of the effect and the probability of its  
23 occurrence", and then it refers the reader to Part Roman numeral  
24 V of this policy statement, isn't that correct?

1 A That's correct.

2 Q So at the outset here they're talking with regard to  
3 what constitutes a substantial risk to two functions. One is  
4 the seriousness of the effect of this chemical or mixture of  
5 chemicals, isn't that correct?

6 A That's right.

7 Q And second is -- and the second is the fact or  
8 probability of its occurrence?

9 A Yes.

10 Q And those two functions are connected by the word  
11 "and", are they not, sir?

12 A Yes.

13 Q And does that normally mean that both of them must  
14 be present for there to be a determination that there is a sub-  
15 stantial risk?

16 A Yes.

17 Q It's not either/or, one or the other, it's both?

18 A The word both is used in that sentence.

19 Q All right. Now the seriousness of the effect, which  
20 is one of these two functions of what constitutes a substantial  
21 risk, that's referred to in Part V of this policy statement,  
22 is it not?

23 A Part V describes what constitutes substantial risks.

24 Q Right. And it talks about the effects, does it not?

1 A Yes.

2 Q Turning to the second page of the exhibit there in  
3 Column 3 on the far right there's the section that commences with  
4 the heading Roman Numeral V, What Constitutes Substantial Risk,  
5 and it says at the beginning there, A substantial risk of injury  
6 to health or the environment is a risk of considerable concern  
7 because of (a), the seriousness of the effect, and then it  
8 refers you to see Subparts a, b, c, below for illustrative  
9 effects of concern.

10 A That's correct.

11 Q So here it's saying okay, these two functions, the  
12 first one being seriousness of effect, what we're talking about  
13 are things like a, b, and c, is that right?

14 A That's correct.

15 Q So let's just go now to a, b, and c, which are then  
16 followed on the next page, and (a) talks about human health  
17 effects?

18 A That's right.

19 Q Is that right?

20 A That's correct.

21 Q And it speaks of human health effects, and it describes  
22 some, cancer, birth defects, etc. or serious or prolonged in-  
23 capacitation, including the loss of or ability to use normal  
24 bodily functions, and it goes on whatever, but that's --

1 A That's right.

2 Q But that's one type of serious effect?

3 A Right.

4 Q -- that they're saying constitutes substantial risk?

5 A Human health effects, right.

6 Q And then they go on down, let's just go to (b) here.

7 They talk about environmental effects, wide spread and previously  
8 unsuspected distribution in environmental media as indicated in  
9 studies, excluding material contained within appropriate dis-  
10 posal facilities, and it's got another example under 2 and 3 and  
11 4 there, does it not?

12 A Yes.

13 Q So you've got human health effects, environmental  
14 effects, and the last serious effect that they talk about is  
15 (c) down there at the bottom of this first column on the third  
16 page, emergency incidents of environmental contamination?

17 A Yes.

18 Q And does that talk about -- well, let's just read  
19 it. It says "Any environmental contamination by a chemical  
20 substance or mixture to which any of the above adverse effects  
21 -- those are the ones we've just been through --

22 A Yes, sir.

23 Q -- "has been described and which because of the  
24 pattern, extent and amount of the contaminant, and then it goes

1 ahead and talks again about seriously threatens humans with  
2 cancer and those types of effects previously described?

3 A Right.

4 Q So in looking at the first function of this test of  
5 substantial risk to see if there is one there, one considers  
6 the seriousness of the effect and does it meet the types of  
7 examples that EPA has given, isn't that correct?

8 A That's right.

9 Q Now in looking at the seriousness of the effect do  
10 you look at the product that is in front of you, the mixture  
11 of chemicals that are in it as it is there and determine whether  
12 that chemical as constituted with those mixtures and levels of  
13 different chemicals in it, whether it has a serious effect?

14 A It's the entire product.

15 Q It's the entire product?

16 A Yes.

17 Q I want to continue on that in a minute, but before I  
18 do, if you were, hypothetically speaking, to determine that a  
19 particular product did cause one of these serious effects after  
20 looking at the entire product and you had information, and we'll  
21 talk about what kind of information that is in a minute, but  
22 you had information that told you that there was a serious  
23 effect, then the second function also has to be considered as  
24 stated in the policy, does it not?

1 A Yes.

2 Q And that second function then is the probability of  
3 its occurrence?

4 A That's right.

5 Q Isn't that right? Now, going back to Page 2 of this  
6 where we -- in that far right hand column under Roman Numeral  
7 V which constitutes substantial risk, we pointed out that the  
8 seriousness of the effect as described or as examples are  
9 described in a, b, and c, which we've been through, and Mr.  
10 Carr then picked out of the entire context of this policy  
11 statement of several pages one sentence here on Plaintiff's  
12 Exhibit 1293, and that sentence is contained just below that  
13 portion of Paragraph Roman Numeral V that we were reading from  
14 when we got over to what the serious effects were, isn't that  
15 correct?

16 A Yes.

17 Q And in fact, in the beginning of Roman Numeral V  
18 after it lists and refers you to a, b, and c for the seriousness  
19 of effects that they're talking about, it then goes on and says  
20 and (b), it reiterates again the second function of what con-  
21 stitutes a substantial risk, it says, and (b), the fact or prob-  
22 ability of its occurrence. And then it goes on, does it not,  
23 and starts to talk about exposure and what you look at with  
24 regard to exposure when you have satisfied the first function,

1 does it not?

2 A Yes.

3 Q When you have determined that there is a serious effect.  
4 And in fact, it states, these two criterion, that is, the  
5 seriousness of the effect and the fact or probability of its  
6 occurrence, are differently weighted for different types of  
7 effects. It says the human health effects described in Sub-  
8 paragraph (a) below, the one we just read, it says if you've  
9 got that kind of serious effect and you've already established  
10 that you've got that kind of serious effect, the EPA then says  
11 in its policy statement, does it not, sir, that they are so  
12 serious that relatively little weight is given to exposure?

13 A Yes.

14 Q So if you have established the first function of the  
15 test, that is, that you have a serious health or serious, as  
16 they say, a serious effect from this chemical or its mixture,  
17 then you give little weight -- little weight to exposure  
18 in determining whether it has to be reported even though it is  
19 a serious health effect?

20 A Yes.

21 Q Now, let's get back to the first function, the serious  
22 effect. You told us, I believe, that you look at the entire  
23 chemical that you've got there and its makeup and the portions of  
24 other chemicals that might be in it to determine if the whole

1 or any portions in it at those levels would have one of these  
2 serious effects, isn't that correct?

3 A Yes, the entire product is considered.

4 Q And to determine if there is a serious effect what  
5 you're supposed to report, getting back to the meaning of the  
6 statute, is information, isn't that right?

7 A That's right.

8 Q Information which reasonably supports the conclusion  
9 that the substance or mixture presents a substantial risk of  
10 injury. So you have to have information which reasonably  
11 supports the conclusion of both functions of what constitutes  
12 substantial risk, serious effect and exposure, all right?

13 A Yes.

14 Q Now, there's a definition of substantial risk infor-  
15 mation. What kind of information are we talking about, and don't  
16 they define that in this policy statement?

17 A They do, but they define it in terms of itself.

18 Q All right. And that's again though on Page 27

19 A Umhm.

20 Q Under definitions, isn't it?

21 A Yes.

22 Q In the first column, Page 27

23 A Right. Last paragraph under definitions.

24 Q Uh-huh. And it says the term substantial risk infor-

1 mation means information which reasonably supports the con-  
2 clusion that a chemical substance or mixture presents a sub-  
3 stantial risk of injury to health or the environment, right?

4 A Yes.

5 Q So that is almost using the very language of what is  
6 being defined to define itself?

7 A Yes.

8 Q But do they not have in the policy statement another  
9 section that deals on this topic of substantial risk information?

10 A Section VI describes the nature.

11 Q All right. That's on the third page, isn't it?

12 A Yes, umhm. The nature and sources of information.

13 Q So there's a whole section in here that deals with  
14 -- it's entitled Section Roman Numeral VI, Nature and Sources  
15 of Information which Reasonably Supports the Conclusion of  
16 Substantial Risk?

17 A Yes.

18 Q So in this section they're going to finally tell us  
19 what kind of information is this we've got to have or that we  
20 look at to determine if there is a substantial risk, if there  
21 are serious effects?

22 A That's right.

23 MR. MUSGRAVE: Your Honor, would this be a good  
24 point?

1 THE COURT: You going into a new section?

2 MR. MUSGRAVE: Yes, fine.

3 THE COURT: Ladies and gentlemen, we'll break for  
4 lunch at this time. We'll resume again at 1:30. The admonish-  
5 ments which I've given you earlier will apply during this lunch  
6 break also. Court's in recess.

1 STATE OF ILLINOIS )  
2 COUNTY OF ST. CLAIR ) SS

3  
4 I, MARSHA SCHNIPPER, one of the Official Court Re-  
5 porters in and for the Twentieth Judicial Circuit of the State  
6 of Illinois, and the Official Court Reporter who reported the  
7 proceedings had at the hearing of Frances E. Kemner, et al. vs.  
8 Monsanto Company, No. 80-L-970, on the 16th day of April, 1985,  
9 do hereby certify that the above and foregoing is a true and  
10 correct transcript of the proceedings had at said hearing,  
11 which proceedings were reported by me in shorthand and by me  
12 correctly transcribed.

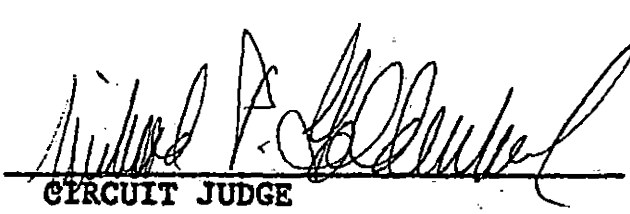
13 Dated this 22nd day of April, 1985.

14  
15  
16  
17  
18 Marsha Schnipper  
Official Court Reporter

1 STATE OF ILLINOIS )  
2 TWENTIETH JUDICIAL CIRCUIT ) SS  
3 COUNTY OF ST. CLAIR )  
4

5 I, RICHARD P. GOLDENHERSH, Circuit Judge in and for  
6 the Twentieth Judicial Circuit of the State of Illinois, and  
7 the sole presiding Judge in the aforesaid cause on the 16th day  
8 of April, 1985, do hereby certify that I have examined the  
9 aforesaid transcript of the proceedings and further certify  
10 that the same is a true and correct transcript of said pro-  
11 ceedings had in said cause.

12 Dated this \_\_\_\_\_ day of April, 1985.  
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17 \_\_\_\_\_  
18 CIRCUIT JUDGE  
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