

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

FRANCES E. KEMNER, et al,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	CAUSE NO. 80-L-970
	)	
MONSANTO COMPANY,	)	
	)	
Defendant.	)	

REPORT OF PROCEEDINGS

Before the HONORABLE RICHARD F. GOLDENHERSH

January 10, 1986

APPEARANCES:

MR. REX CARR, Attorney at Law, and
MR. JEROME SEIGFREID, Attorney at Law,
On Behalf of the Plaintiffs.

MR. KENNETH HEINEMAN, Attorney at Law, and
MR. JOSEPH NASSIF, Attorney at Law,
On Behalf of the Defendant.

TRACY LYBARGER, C.S.R., R.F.R.

Official Court Reporter

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1 BE IT REMEMBERED AND CERTIFIED, that heretofore,
2 on to-wit: January 10, 1986, the matter as hereinbefore
3 set forth came on for hearing before the Honorable Richard
4 P. Goldenherseh, Circuit Judge in and for the Twentieth
5 Judicial Circuit, State of Illinois, and the following was
6 had of record, to-wit:

7 (The following Offer of Proof was had out of the
8 hearing and presence of the jury.)

9 THE COURT: You may be seated. Mr. Carr?

10 CONTINUED CROSS EXAMINATION

11 BY MR. CARR:

12 Q Dr. Kimbrough, we were discussing the Missouri
13 Health Study yesterday. What in your judgment is the
14 number of people that would suffer from dizziness--percen-
15 tage of people?

16 A You mean in the study or in the general popula-
17 tion?

18 Q In the general population?

19 A A lot. I don't really know.

20 Q You have no idea whatsoever as to what percentage
21 of people you would expect to have dizziness in the general
22 population?

23 A It--no, not really. It depends on the age and--

24 Q Doctor, the general population includes all ages.

1 What percentage of the general population do you expect to
2 have dizziness?

3 A I guess almost everyone will be dizzy at some time
4 at some point.

5 Q Doctor--and you know that that's not what I'm
6 asking you about--I'm asking you in terms of the Missouri
7 Health Study. You asked that question; you put that
8 question in there for your people to discover whether or
9 not the people that have been exposed to dioxin have a
10 particular sign or symptom. What percentage of people do
11 you expect to answer in the affirmative from the general
12 population?

13 A I didn't put that question in there.

14 Q Doctor, you testified in behalf of Monsanto here
15 earlier that you and others at CDC helped to design that
16 proposal; the name of CDC is on the cover as being one of
17 the participants; I believe you said that CDC helped fund
18 it, if not fund it entirely; you are here as an expert
19 witness; you brought up the subject of the Missouri Health
20 Study in your direct testimony. I'd like--if you don't
21 take responsibility for it, who will take responsibility
22 for the study?

23 A I helped design the study, as you correctly
24 stated, but I'm not responsible for each and every question

1 on that questionnaires. When you work in a group and design
2 something, you make certain suggestions, and then you
3 finally arrive at a protocol by consensus. But, that
4 doesn't mean that I have to agree with every question that's
5 on this questionnaire or that I feel that every question is
6 important.

7 Q But, when you said you arrived at a consensus, you
8 did indeed participate in the proposal and you did, includ-
9 ing you, arrive at a concensus. Now, that question is in
10 there; and I know that you discussed it with the people
11 before it was put in there; I know you considered it,
12 you're that type of scientist; and I'm sure that you had in
13 your mind at that time what you would expect the general
14 population to reveal would be a symptom of dizziness when
15 asked such a question. Now, I'm now asking you today what
16 percentage of the population do you believe would have
17 dizziness?

18 A I believe that most people at some point have
19 dizziness, and I don't think it was a good question.

20 Q Doctor, I know; we've said that.

21 A And that was my opinion--

22 Q But that question, if you put in in expecting
23 that answer, then there would be no point in putting it in,
24 because the answer would be 100 percent. What did you

1 expect to get a normal percentage of population to answer
2 in the framework that you asked the question designed to
3 discover health effects?

4 A In my opinion it was a meaningless question. That
5 was my personal opinion.

6 Q Now, Doctor, if you expect a hundred percent of
7 the people to have dizziness to answer in the affirmative,
8 then it would be revealing indeed that only 15 percent with
9 a high risk exposure were dizzy. That would suggest to you
10 as a scientist, wouldn't it, ma'am, that dioxin has an
11 effect upon the body that would prevent a person from being
12 dizzy?

13 A No.

14 Q Oh, it wouldn't? If you expect a hundred percent
15 affirmative answers, and you only got 15 percent?

16 A It just reveals that maybe people answered the
17 question in some way where they only considered dizziness
18 of a profound dizziness, or I don't know how--it's a very
19 soft assessment of a health effect.

20 Q Doctor, that may be, but it was one of the factors
21 you used to assess health effects. And by "you" I mean you
22 as a participant in this Missouri Heath Study. And, there-
23 fore, I'm obligated to ask you about it. If you say today
24 all of these questions were meaningless, then what you are

1 telling me is that your health study was meaningless and
2 that CDC participated in a meaningless event or scientific
3 endeavor, one that was designed from the outset to show
4 nothing and designed to tell the world there's nothing
5 wrong with anybody. We at the CDC, we at the Missouri
6 Public Health System, and we at St. Joseph's Hospital
7 conducted this great survey of the exposed people, and we
8 find nothing wrong with them; we find them to have no prob-
9 lems that are not existent in the general population. It
10 sounds to me like, and I submit to you that you can either
11 disagree or agree with this statement of mine, it sounds to
12 me like you created a phony study for the purpose of a
13 publicity and taking away from the effects of dioxin. Is
14 that correct, Dr. Kimbrough?

15 MR. HEINEMAN: Object to the speech, your Honor,
16 and move that it be stricken as not part of the question.
17 Improper.

18 THE COURT: It was proper--in viewing the
19 question in it's totality, it's a proper question in cross
20 examination. Overruled.

21 A I did not say that all of these questions were
22 meaningless. I just simply said that dizziness was
23 something that occurred commonly in the general popu-
24 lation, and that if you just take one question like that out

1 of context without evaluating all of the other things that
2 we did in this study that--it just doesn't mean anything.
3 And to ask me what I think the prevalence of this would be
4 in the general population really all by itself is meaning-
5 less. It depends on how persistent the dizziness is with
6 somebody that has this symptom. You then have to examine
7 them to see if there are other things wrong with them. But,
8 just by itself--people every once in a while when they get
9 up very rapidly out of bed, they may feel that they are
10 slightly dizzy early in the morning, or they may have a
11 hangover, or they may have some dizziness. So, it's
12 something that can be very common. But, in the context of
13 all of the other things, it may mean something. That's why
14 we ask these questions. And we partly ask the questions,
15 because at the moment we really don't know--that was also
16 the problem with the design of the Ranchand Study--what the
17 health effects are that might be caused by TCDD. It's like
18 throwing out a net and then seeing whether there are
19 differences and then trying to interpret that and see
20 whether there actually may be some health effects that may
21 be associated with this type of exposure. That's what
22 epidemiology of--this type of epidemiology is all about when
23 you don't do clinical trials.

24 Q Doctor, I suggest you didn't answer the question

1 that I posed to you. Was this study designed simply to
2 placate the public? That is, to let the public believe
3 that you were doing something about the dioxin problem and
4 then ask meaningless questions and come up with meaning-
5 less means taking--lumping all the laboratory findings
6 together and getting just means? Was it for the purpose of
7 letting the public believe that you were doing something
8 about the dioxin problem and then announcing the results
9 that there's no difference between the two groups exposed;
10 they all have ailments that everybody has; and therefore
11 dioxin doesn't cause any problems?

12 A No, of course not. We tried the best we could.
13 What I'm trying to explain to you that there are limi-
14 tations to what is called observational epidemiology, and
15 you are trying to misrepresent and misinterpret our work.

16 Q Doctor, what I've asked you, every question that
17 I've asked you about so far that you submitted to the
18 people, every single one that I've asked you about so far
19 you've in effect said is meaningless because you can have
20 swelling in the hands at any time in your life, because you
21 can have--everybody has headache, because everybody has
22 joint and muscle aches, because everybody has dizziness,
23 because everybody has a peripheral neuropathy. These
24 questions then, every single time you've answered you've

1 said in effect that question is meaningless; isn't that
2 correct?

3 MR. HEINEMAN: Objection, your Honor, mischar-
4 acterizes the witness' testimony.

5 THE COURT: Overruled.

6 Q Isn't that correct?

7 A No.

8 Q Which question did you say was meaningful?

9 A For instance, I said that losing weight, ten
10 pounds--over ten pounds of weight--

11 Q I do stand corrected; you did say that was mean-
12 ingful.

13 A --was important. And I never said that any of
14 these questions were entirely meaningless. They are only
15 meaningless if you take them out of context; and that's what
16 you are doing. See, you have to understand and you have to
17 evaluate all of this together rather than just saying--

18 Q Now, Doctor, before we can evaluate it all to-
19 gether, we have to arrive at what was found and the basis
20 for determining the validity of what was found. And I do
21 agree that you did say the weight loss had meaning, but all
22 the other questions thus far you've said have no meaning,
23 that they can't in effect use it to asses the health
24 conditions of these people; isn't that correct?

1 A I didn't say that they had no meaning; I said that
2 this was something that was very prevalent in the general
3 population and it was difficult to interpret. That's what
4 I said.

5 Q Well, you didn't interpret it at all?

6 A Or that's what I tried to say anyway.

7 Q You gave no significance to the fact that 36 and
8 41 percent of the people respectively had persistent
9 headaches, did you, ma'am, because you said what--a hun-
10 dred percent of the population--was that the one you said a
11 hundred percent have headaches--50 percent of the population
12 have headaches; isn't that right, ma'am?

13 A We were talking about numbers here.

14 Q Isn't that what you said?

15 A We weren't talking about headaches in general.

16 Q Isn't that what you said, ma'am?

17 A I said that headache is very prevalent in the
18 general population.

19 Q No, you said that half the people or better have
20 headaches?

21 A Yes.

22 Q Twenty-five percent of the other people have
23 swollen legs, swollen limbs, swollen fingers?

24 A That's the way it is. I mean, there's nothing I

1 can do about it.

2 Q Well, Dr. Kimbrough, I'm not asking whether or not
3 that's the way it is; I submit to you that that's a flip
4 answer that you've given to me and not one that's meant to
5 enlighten me. Dr. Kimbrough, I'm asking you specifically
6 as to the meaning of these questions and as to the meaning
7 of this study. I would appreciate if you would respond
8 accordingly. Doctor--

9 MR. HEINEMAN: Object to the speech, your Honor,
10 and move it be stricken.

11 THE COURT: Overruled.

12 Q Doctor, what percent of the population do you
13 believe will have loss of sensation in their extremities in
14 the context of the study that was conducted in the way the
15 question was posed for the purpose of using and putting that
16 question in, what percent of the people in the general pop-
17 ulation would you expect to answer that they had loss of
18 sensation in the extremities?

19 A What do you mean by loss of sensation?

20 Q Whatever you meant in the question that you put to
21 the people?

22 A I mean, are they totally numb?

23 Q I'm sorry, whatever you meant, ma'am. I don't
24 know what you meant; you were the ones that designed the

1 study, I did not; it is your question, not mine. Whatever
2 you expected to get as a response. What response did you
3 expect to get from the general unexposed population when
4 you asked that question?

5 A There will be some people who will report occa-
6 sional loss of sensation--

7 Q Doctor, to save some--are you going to give me a
8 percentage?

9 A Yes.

10 Q All right.

11 A Up to somewhere between 25 and 30 percent. On the
12 other hand, total loss of sensation and inability to feel
13 hot and cold in addition to that would be a percentage that
14 would be around five or less.

15 Q Well--and in what context did you ask the ques-
16 tion? Which one of those parameters controlled the
17 question you asked?

18 A In this case, it was the broader question, as I
19 remember. I would have to go back to the questionnaire.

20 Q So, you would expect what--50 percent of the--

21 A No, I said around 25 percent.

22 Q Twenty-five percent of the people to answer in the
23 affirmative?

24 A For the broader question, which is not total inca-

1 capacity. But, I would have to go back to the questionnaire
2 to sort out what additional questions there were to
3 determine whether we were dealing with the total loss and
4 whether you could actually gather that from the question-
5 naire. I don't remember.

6 Q And you don't have the questionnaire here, so I
7 can't really examine you on that either; can I?

8 A No. It's really a study, as you correctly stated,
9 done by the Missouri State Health Department. And that's
10 where the questionnaires and all that would be.

11 Q Doctor, if you would expect 25 percent to have
12 these kind of problems, and you only end up with 20 percent,
13 that would indicate that dioxin is doing something to the
14 nervous system as well; wouldn't it?

15 A I'm sorry, could you--

16 Q If you expected 25 percent to answer in the
17 affirmative, and you only got 19 or 20 percent, that would
18 be significant; wouldn't it, ma'am?

19 A No.

20 Q You don't think so?

21 A No. It just depends on--you see, you are asking me
22 about the general population.

23 Q Yes.

24 A And then, it depends on the age distribution and a

1 lot of other things.

2 Q Doctor, you designed this study with the age in
3 mind of that very group; did you not?

4 A Of that very group, but the general population.

5 Q You picked your group to mirror the general popu-
6 lation; did you not?

7 A No.

8 Q You did not?

9 A No, because we had a comparison group; and that's
10 why we picked--

11 Q What comparison group did you have?

12 A That's the low risk group.

13 Q The low risk group was exposed. What kind of
14 comparison group is that?

15 A Well, we didn't think they had any exposure.

16 Q Now, Doctor, you just got through telling me yes-
17 terday that if they walked on the streets of Times Beach
18 they had exposure; did you not? Didn't you tell me that
19 yesterday? Didn't you tell me that yesterday?

20 A That's what you said.

21 Q No, that's what you said, Doctor. Did you not say
22 that yesterday that if they walked on the streets of Times
23 Beach they had exposure?

24 A As far as we could determine--

1 Q Doctor, answer my question, please. Isn't that
2 what you said yesterday?

3 A Could we read back what I said yesterday?

4 Q No, because she doesn't have it. I asked you the
5 question if people walked on the streets of Times Beach and
6 were included in this questionnaire and in the low risk
7 group, and you said they were. I said, "Well, then they had
8 exposure; did they not?" And you said, "Yes, they did."

9 MR. HEINEMAN: Objection, your Honor, misrepres-
10 sents the witness' testimony.

11 THE COURT: Overruled; it does not.

12 Q Don't you recall that being asked?

13 A I would have to go back to the record. It's on the
14 record, so you can clarify it.

15 Q I know it's in the record. But, now you are saying
16 that the people had no exposure; aren't you?

17 A I'm saying that it was a low risk group, and we--

18 Q Doctor, that's not what you are saying now, that
19 they had no exposure. They did indeed have exposure in the
20 low risk group, most of them; didn't they?

21 MR. HEINEMAN: Object to the question; interpret-
22 ted the witness' answer; argumentative.

23 THE COURT: Not responsive; objection is properly
24 made; your objection is overruled.

1 A No.

2 Q Doctor, did you not say that the people in the low
3 risk group, most of them had exposure? Could you answer
4 that question directly?

5 A No.

6 Q Are you in fact answering the question saying "no"?

7 A I'm not understanding any more where we are.

8 Q Doctor, did you not testify yesterday that most of
9 the people in the low risk group had some kind of exposure
10 to dioxin?

11 A I would like to go back--

12 Q Doctor, could you answer that question directly,
13 please?

14 A As I recall the conversation, you said that they
15 walked across the street and couldn't they have had some
16 exposure walking across the street. And I said yes.

17 Q Yes. And you agreed that they lived in Times
18 Beach; did you not, ma'am?

19 A Not all of them; some of them.

20 Q All right. Most of the people lived in these
21 contaminated areas, did they not, that were in the low risk
22 group?

23 A That's the question you asked me yesterday, and I
24 said yes.

1 Q Yes. All right. And then, after you agreed that
2 most of the people in the low risk group lived in the
3 contaminated areas, I then asked you, "Well then, if they
4 just walked on the streets that were sprayed with dioxin,
5 they had exposure; didn't they, ma'am?" And you then said
6 yes; did you not, ma'am?

7 A I think we had some--

8 Q Excuse me, could you answer that question, because
9 that's exactly what I asked you.

10 A No, your question was slightly different.

11 Q How was it slightly different?

12 A In that they would have had to use the streets
13 sometimes; wouldn't they?

14 Q Yes.

15 A And I said yes.

16 Q And then, if they used the streets that were
17 exposed with the dioxin, they had exposure?

18 A They might have had exposure, yes.

19 Q Yes. And your answer was yes to that question;
20 correct, ma'am?

21 A Yes.

22 Q Isn't that correct?

23 A Yes.

24 Q All right. Then the people in the low risk group,

1 most of the people in the low risk group had exposure to
2 dioxin; did they not, ma'am?

3 A The amount of exposure--

4 Q Could you answer that question directly, Dr.
5 Kimbrough?

6 A There is something in toxicology called a response
7 curve--

8 MR. CARR: Your Honor, would you order the witness
9 to answer that question.

10 THE COURT: Doctor, you are so ordered. The
11 question was clear. You have to answer it directly.

12 THE WITNESS: Could I have the question again?

13 THE COURT: Could you read back the question?

14 (The previous question was read back by the court
15 reporter, as requested.)

16 A Yes.

17 Q Now, Doctor, the control group then that you used
18 here, most of the people in the control group had exposure
19 to dioxin; did they not, ma'am?

20 A They had negligible exposure to dioxin.

21 Q Is the answer to my question yes they did have
22 exposure, but you consider it negligible?

23 A Yes.

24 Q And most of these people that had exposure to

1 dioxin--well, you compared the group that had the exposure
2 with dioxin, what you considered a negligible exposure, to
3 people that you considered to have not a negligible expo-
4 sure; isn't that correct, ma'am?

5 A That had high exposure, yes.

6 Q Is the answer to my question this group in the high
7 risk group had significant exposure or at least not negligi-
8 ble?

9 A Yes.

10 Q Yes. Now, Doctor, what is the range of exposure
11 that you consider negligible? That is, would encompass your
12 low risk people? And what's the range of exposure that you
13 would consider not negligible? That is, significant and
14 would compose your high risk people?

15 A That is in the document that you have. And the
16 criteria that we used were, I believe, people that lived, I
17 think it was, two years in--

18 Q Now, Doctor, I want to know the level of dioxin
19 contaminant that you considered in the high risk group and
20 the level of contaminant that you considered in the low risk
21 group?

22 A The area where these people lived had spotty
23 contamination; it wasn't uniform. And the people that were
24 living or in close proximity in areas that had 200 parts per

1 billion--I guess the cutoff was really 20 parts per billion,
2 but then had levels up to almost 1 part per million in the
3 soil were the people that were in the high risk group. And
4 they would have had to live there for a period of time in
5 order to qualify for the high risk group. And they would
6 have had to be gardening and have relatively intimate
7 contact with the soil.

8 Q All right. If I understand you correctly, then,
9 your high risk group consisted of people that lived in areas
10 that were known to be contaminated of dioxin or worked or
11 had extensive soil activity in areas that were known to be
12 contaminated with levels from 20 parts per billion up to 1
13 part per million?

14 A Yes.

15 Q And your low risk group, what? Your low risk group
16 would be anything under 20 parts per billion?

17 A These were people where there actually was no
18 contamination and they had no intimate contact with soil,
19 but they might have walked across the street or they might
20 have--in other words, they were in the general environment,
21 but they had no intimate contact as far as we could
22 establish with such contaminated soil.

23 Q Well, they would have been living in areas that
24 could indeed be contaminated with less than 20 parts per

1 billion and have activity in an area that's contaminated
2 with less than 20 parts per billion of TCDD; isn't that
3 correct?

4 A No.

5 Q No?

6 A We took people that didn't have that. We were just
7 careful to call them a low risk group, because we are still
8 trying to establish their--

9 Q Doctor, you are talking in generalities, and I'm
10 trying to get specific. These people that lived in Times
11 Beach, part of whom were in your low risk group--now, in the
12 parts of Times Beach that they lived in, did they live in
13 areas that were contaminated with less than 20 parts per
14 billion? Did you select any of your low risk group from
15 people who lived in a section of Times Beach that was
16 contaminated with greater than 20 parts per billion, or were
17 they--all the ones that were from Times Beach--were they all
18 from a part of Times Beach that was contaminated with less
19 than 20 parts per billion?

20 A As far as I recall, they should not have had any
21 intimate contact with soil that was contaminated above 1
22 part per billion. That was my recollection.

23 Q Doctor, I didn't say intimate contact with soil in
24 my question; I said lived in the section that was contami-

1 nated. Are you telling me that some of the low risk people
2 could live in the section of Times Beach that's contaminated
3 from 20 parts per billion to one part per million, but if
4 they did not have intimate contact with the soil they were
5 not considered high risk and thus could be in the low risk
6 group?

7 A They would have lived in areas that had less than 1
8 part per billion.

9 Q In areas in Times Beach that had less than 1 part
10 per billion?

11 A Yes.

12 Q Then your phrase "intimate contact" really didn't
13 mean anything, did it, "intimate contact with the soil"?

14 A In order to assure more--

15 Q Could you answer that question? Did the phrase
16 that you used, "intimate contact with the soil", to describe
17 your high risk people; did it mean anything?

18 A Yes.

19 Q All right. Did you select people that lived in
20 Times Beach in areas that were indeed contaminated with 20
21 parts per billion or greater but where they had no history
22 of intimate contact with the soil or frequent working with
23 the soil or anything of that sort?

24 A Not for the high risk group.

1 Q No, I meant for the low risk group?

2 A No.

3 Q How many of your low risk group were actually from
4 Times Beach?

5 A I don't exactly know the number; we would have to
6 get that from Missouri.

7 Q Well, we've already established that. All of the
8 people from Times Beach, now, whether they lived in the--
9 strike that. Were there some streets in Times Beach that
10 were sprayed with this contaminated oil and other streets of
11 Times Beach that were not sprayed with it?

12 A Yes.

13 Q And you could use--or did you use in your low risk
14 group people who lived on streets not sprayed with the
15 contaminated oil?

16 A Yes.

17 Q Ma'am; is that correct?

18 A As far as I know, but--

19 Q Yes.

20 A But to make sure, we would have to contact Mis-
21 souri.

22 Q But, these people then in that low risk group that
23 lived on streets not sprayed with the oil could quite easily
24 have and indeed would have access to the streets that were

1 sprayed with the contaminated oil; correct, ma'am?

2 A Yes.

3 Q And they could drive on those streets or walk on
4 those streets, and dust on those streets would blow to them
5 and vapors from those streets could blow to them as well;
6 correct, ma'am?

7 A No; it doesn't volatilize.

8 Q I'm sorry?

9 A TCDD doesn't really evaporate.

10 Q Doctor, that's another side issue. We have plenty
11 of evidence in this case that it does. We've got sworn
12 testimony from Monsanto employees that it does. And we have
13 statements from others that it does. We've got lots of--
14 Monsanto has put on lots of testimony on that point already;
15 I don't want to argue. But, assume if you will, that this
16 does evaporate, that it does volatilize. Would you assume
17 that, ma'am?

18 A Okay.

19 Q And just insight, you are familiar with the work of
20 Nash and Beall; aren't you?

21 A I'm sorry?

22 Q You are familiar with the works of Nash and Beall;
23 aren't you, ma'am?

24 A Yes.

1 Q And they did find that TCDD in the air in their
2 studies; did they not, ma'am?

3 A That was never a published and a reviewed article.

4 Q It was published and a peer reviewed article. Are
5 you not familiar with it?

6 A I didn't see the peer reviewed article, no.

7 Q Doctor, back to my point anyway. The point is that
8 people that lived on the noncontaminated streets of Times
9 Beach had exposure and would use the contaminated streets of
10 Times Beach; would they not?

11 A Yes.

12 Q And they would--might visit back and forth, back
13 yards from one house with a noncontaminated street might butt
14 right up against the back yard of another house on a contam-
15 inated street; correct?

16 A I'm not absolutely sure, but it's possible.

17 Q And your low risk group then had--was it their
18 residences that had soil with less than 1 part per billion
19 of TCDD in it?

20 A Yes. I mean, the outside of the house; not the
21 inside.

22 Q So, you would take people and did include people in
23 your low risk group who lived in areas where the contamina-
24 tion was 900 parts per trillion or less?

1 A No, I didn't say that.

2 Q Well, you said you excluded anybody in the group
3 with 1 part per billion; did you not?

4 A Our analysis, at least for some of the contract
5 laboratories, the limit of detection for TCDD in soil was
6 around 100 parts per trillion. So, there could have been
7 nothing or there could have been something below 100 parts
8 per trillion in some cases. I wouldn't know.

9 Q Doctor, I thought you told us that the low risk
10 group included only those people who lived in areas that
11 were contaminated with 100 parts per billion of TCDD or
12 less?

13 A The only reason I said that was because of the way
14 the chemical analysis was set up.

15 Q Doctor, is what you are saying is that your low
16 risk people included people who lived in residences or lots
17 that could be contaminated with dioxin up to 100 parts per
18 billion?

19 A Or there could be nothing.

20 Q Or there could be nothing?

21 A Right.

22 Q Is that correct that they could have lived in
23 residences where they had up to 1 part per billion of TCDD
24 contamination?

1 A We were only quantitating the 1 part per billion
2 and slightly below that, and then beyond that, although on
3 a qualitative base we would be able to say, "Well, there
4 really wasn't any TCDD" we made no effort to quantitate it.

5 Q Could you answer the question that I asked you?

6 A I can't, only what I told you.

7 Q Doctor, I submit that you can.

8 MR. CARR: And would you read the question to
9 her?

10 (The previous question was read back by the court
11 reporter, as requested.)

12 A Because of the scientific limitations, I cannot--

13 Q Could you answer that question, ma'am?

14 A I can't really answer it. I can't give you tech-
15 nical information.

16 Q Did you hear the word "could" in that question?

17 A That's speculation.

18 Q My question is: People you selected from the so-
19 called noncontaminated areas of the TCDD to include in your
20 low risk group could have included people who had homes
21 that were--and areas around the homes--that were contami-
22 nated up to 1 part per billion of TCDD; isn't that correct,
23 ma'am?

24 A That's mere speculation, and I don't speculate;

1 I'm a scientist.

2 Q Did you hear when I said the word--Dr. Kimbrough,
3 the word "could" is in there.

4 A Yes. But, I don't want to speculate, because I'm
5 a scientist.

6 Q Well, Doctor, you are required to answer that
7 question when I ask it.

8 A I can't.

9 Q I'm sorry?

10 A I cannot.

11 MR. CARR: Your Honor, would you direct the
12 witness to answer the question?

13 THE COURT: Doctor, you have to answer the
14 question. It's a proper question.

15 THE WITNESS: If I can't give an answer that is
16 correct, then why should I answer it?

17 THE COURT: You understand the question; the
18 question is a proper question to ask of an expert witness
19 such as yourself in a court of law in the state of Illi-
20 nois; therefore, you have to answer it.

21 A No.

22 Q Doctor, do you have any--you did select people
23 that were from Times Beach; did you not, ma'am?

24 A Yes.

1 Q And there were variations of contamination in
2 Times Beach; wasn't there, ma'am?

3 A Yes.

4 Q And you identified those areas that had contami-
5 nation of 1 part per billion or above; did you not, ma'am?

6 A Yes.

7 Q And you did not identify any area of being contam-
8 inated other than 1 part per billion or above; did you not?

9 A Qualitatively.

10 Q Qualitative what? That's not an answer.

11 A That was what I was trying to explain earlier.

12 Q Doctor, could you--do you understand what I'm
13 asking you? Is it not a fact--maybe I can put it more
14 plainly--is it not a fact that you identified areas of
15 Times Beach that was contaminated from 20 parts per billion
16 to 1 part per million?

17 A Yes.

18 Q And did you then identify parts of Times Beach
19 that were contaminated from 1 part per billion to 20 parts
20 per billion?

21 A Yes. You always say "you". All of this work was
22 really done by the Environmental Protection Agency.

23 Q Well, I mean by those participants in the study.
24 The values that you used in the study, whether you did the

1 identifying or not. I'm not suggesting that you personally
2 or you at CDC did; my question said the values that you
3 all used; all right?

4 A Yes.

5 Q And I can understand your problem with that
6 question. There was identified in Times Beach--whether it
7 was by you, or by God, or by EPA, or by whoever--the areas
8 of Times Beach were identified by level of contamination;
9 were they not, ma'am?

10 A Yes.

11 Q And there was identified those areas of Times
12 Beach that had contamination from 20 parts per billion to
13 1 part per million; is not that correct, ma'am?

14 A Yes.

15 Q And you selected from those areas, as you have
16 previously stated, high risk participants; did you not,
17 ma'am?

18 A Yes.

19 Q Now, there were areas of Times Beach that were
20 identified as having contamination of less than 20 parts
21 per billion and down to 1 part per billion; isn't that
22 correct, ma'am?

23 A And down to nothing.

24 Q Could you answer the question, first of all, as I

1 gave it to you?

2 A Yes.

3 Q And did you select from the areas that were
4 contaminated, or is it possible that any of the low risk
5 participants came from the areas that were identified as
6 having contamination from 20 parts per billion down to 1
7 part per billion?

8 A As far as I know, we did not try to take anybody
9 out of that middle group.

10 Q That isn't what I asked you. I did not ask you
11 what you tried to do. What I'm asking you--because I
12 understand it was not your intention to go by this kind of
13 parameter for contamination--what I'm asking you, ma'am, is
14 it possible that some of your low risk participants were
15 taken from the group that lived in areas contaminated with
16 20 parts per billion down to 1 part per billion of TCDD?

17 A As far as I know, it's not possible.

18 Q All right. Now, did you also--or was there
19 identified at Times Beach parts of the community that had
20 contamination of 1 part per billion and below, down to
21 nothing?

22 A Most of those analysis were reported as negative
23 or trace or--and so, I don't really know.

24 Q Well, the word trace means there's something