

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

4 FRANCES E. KEMNER, et al.,)

5 Plaintiffs,)

6 v.)

CAUSE NO. 80-L-970

7 MONSANTO COMPANY,)

8 Defendant.)

9
10 REPORT OF PROCEEDINGS

11 Before the HONORABLE RICHARD P. GOLDENHERSH

12 Testimony of Mr. Phocion Park

13 Volume II

14 April 16, 1985

15
16 APPEARANCES:

17 MR. REX CARR, Attorney at Law, and
18 MR. JEROME SEIGFREID, Attorney at Law,
On behalf of the Plaintiffs;

19 MR. JOHN MUSGRAVE, Attorney at Law, and
20 MR. JOSEPH NASSIF, Attorney at Law,
On behalf of the Defendants; and

21 MR. JAMES CRAVEN, Attorney at Law

22
23 PATRICIA A. GANDY, CSR, RPR

24 Official Court Reporter

INDEX

WITNESSES:

MR. PHOCION PARK

Continued Clarification Examination by 75
Mr. Musgrave

Recross Examination by Mr. Carr 141

EXHIBITS:

NUMBER	MARKED	OFFERED	ADMITTED
Defendant's Exhibit 883	94		
Defendant's Exhibit 884	113		
Defendant's Exhibit 885	127		
Defendant's Exhibit 886	133		
Defendant's Exhibit 887	133		

In-Chambers Conference page 75

HEMLOCK

ERASABLE

COTTON CONTENT

(The following proceedings were held in chambers.)

MR. CRAVEN: Judge, two things. I have been working on the Petition for Leave to Appeal in the gag order thing, and necessarily read it again, and tomorrow I am making a speech at Southern Illinois University to the law school and the journalism school, including media representatives. And the subject matter of my speech is the First Amendment, and I think there is still some of it left, and I want to talk about it and necessarily that would include this gag order.

THE COURT: It's a published opinion.

MR. CRAVEN: But you can't talk about the gag order without intimating the existence of this case, and the gag order has an express proscription against the mention of this case. My training is such, whether I agree or disagree with an order, I am not going to violate one.

THE COURT: I understand that and appreciate that.

MR. CRAVEN: And I don't want to do anything that would open me up to an assertion of violation, so I'm asking for clarification or something or an understanding that I can make a speech to a journalism and law school group on the First Amendment and talk about this gag order with impunity.

MR. CARR: What you are asking for is relief from the gag order. You want the Court to give you dispensation in your instance from the gag order is what you are saying; is that correct?

MR. CRAVEN: I'm saying that I recognize that this gag order says that as an attorney for Monsanto I cannot mention this case or intimate its existence or its trial or any particular facts or circumstances or position

1 of the parties concerning the litigation. Now, Judge, you can't talk about
2 a gag order. That would be immaculate, and that's my problem.

3 THE COURT: Do you have any comment?

4 MR. CARR: The Plaintiff's position is that since Jim has chosen
5 to align himself with the devil, he has to oblige himself to obey the rules
6 that apply to the devil, and the gag order would apply to him, and Jim
7 knows that if he spoke before the media in terms critical of the gag order,
8 which he would do because he does, that it's entirely possible that the
9 press could pick that up. It's entirely possible that it could be published
10 in the Post-Dispatch and put on TV, "ex-appellate judge criticizes", and
11 they may not even mention, they may not even know that you represent
12 Monsanto, and this jury could conceivably read that newspaper publication
13 and could conceivably be influenced by it. Now, I'm not suggesting that
14 that's the reason you are going down there to make this speech, but it
15 could occur, and I don't see personally why there should be any different
16 rules for you than there is for other lawyers retained and paid for by
17 Monsanto because it could get to the press, it could conceivably be read
18 by the jury, it could conceivably influence their deliberations.

19 MR. CRAVEN: It would be the first time since William the
20 Conqueror landed that a lawyer is precluded from talking about a published
21 opinion. Now, I think that's not an overstatement, and surely that's not
22 the ground rule.

23 MR. CARR: Well, it's the first time that I am aware of that a
24 published opinion has come out while the case is still being tried, and it's

1 the first time that I know of that--

2 MR. CRAVEN: Look at all of the CBS cases.

3 MR. CARR: --that the lawyer for one of the parties to that case
4 is wanting to speak publicly about the case that's ongoing and being tried
5 and to make a speech in front of media, which would of necessity criticize
6 this Court because that's what you believe, and with necessity could influence
7 the outcome of this case. And while I am not saying that you would design
8 it so, it could be so interpreted, and I personally would be opposed to
9 lifting the gag order and making an exception for you.

10 MR. CRAVEN: Clearly the reason I'm here is the dilemma that's
11 posed by this.

12 THE COURT: I appreciate your checking with me before rather than
13 after.

14 MR. CRAVEN: That's right, I don't want the problem afterwards,
15 and I have no choice but to abide. I have no intention to make any attack
16 other than the type of attack that I make in the Appellate Court or that
17 we are making in the Petition for Leave, and I know that this Court is not
18 sensitive to people challenging a decision.

19 THE COURT: Of course not.

20 MR. CRAVEN: No one could be. You would go bonkers if you suffered
21 that. And it's going to come up, I'm talking to the journalism college,
22 I'm talking to the law school--

23 THE COURT: No, I'm glad that you checked it out, because if you
24 don't bring it up, someone would ask you anyway. I think unfortunately since

1 you are in the position of representing Monsanto, it's the type of situation
2 where I think this order that I had entered would have to apply. And I don't
3 think--the problem is you're sort of wearing two hats.

4 MR. CRAVE: I'm not speaking to a--I'm not there as an advocate.

5 THE COURT: I understand that, but you do represent Monsanto.

6 MR. CRAVEN: That's right.

7 THE COURT: And that's the problem, and I understand that when you're
8 speaking to these journalism students and any actively working people of the
9 media who would be there as well as any law students who would come by, you
10 would be speaking as a former Appellate Court justice and an attorney active
11 in this area, and I understand that. But you are also representing Monsanto,
12 you are one of their retained attorneys. And because of that, and because
13 of this position, and realistically, the problems that Mr. Carr pointed out,
14 I would like to grant you the relief, but I think that it would be unwise to
15 do so. So you are under the gag order and you can, you know, yes, I was
16 involved, I am under the gag order, I can't answer the question.

17 MR. CRAVEN: I can't mention the gag order.

18 THE COURT: Well, you just say I'm involved in the case and I
19 can't talk about it or answer any questions about it, period. It's really
20 like that, and I have found from my experience, and I'm sure you have from
21 yours since your judicial experience is substantially longer that audiences
22 pretty much accept, if you say I can't say certain things because of my
23 position and I will tell you when I can't, I have never had any problem
24 with that, frankly.

1 MR. CRAVEN: I will abide the limitations. I don't like them, but
2 I will abide by them.

3 THE COURT: I understand that.

4 MR. CRAVEN: Now, the other thing it relates to, I was here last
5 week and we gave you for in camera inspection a piece of paper showing
6 litigation costs.

7 THE COURT: Right.

8 MR. CRAVEN: And we took the position that it was not discoverable
9 and I now learn that you have turned it over, you excised--

10 THE COURT: I excised some of it and I ordered the other part
11 turned over.

12 MR. CRAVEN: Now, there is what we think in even a stronger
13 category, but in view of the expanding nature of all of this thing and in
14 the interest of getting absolutely no questions, outside counsel in connection
15 with other litigation have hired consultants. And these consultants have
16 worked with those lawyers in that litigation to give them material.

17 THE COURT: Um hum.

18 MR. CRAVEN: And it was used by them in connection with other
19 litigation.

20 THE COURT: Um hum.

21 MR. CRAVEN: And it was not deemed--if the question was raised, I
22 don't even know that the question was raised, but it was not discoverable in
23 that litigation as a product of lawyers. Some of that material is in the
24 file of some of the in-house lawyers who worked with the outside counsel.

1 THE COURT: Sure.

2 MR. CRAVEN: We're representing to you that that's what the fact
3 is, we don't think that's even remotely discoverable, but we don't want
4 to be in the position of having someone assert at a future time that it is
5 discoverable or that it was any bad faith. And so to obviate that, we're
6 talking about it now. I don't know if you want us to try to dig that up
7 and make it--

8 THE COURT: I'd like to see it in camera.

9 MR. CRAVEN: But then, Judge, we have the further feeling on
10 this that clearly if you say produce it, we have to produce it and we will.
11 But we also, I think, are entitled, showing that we are in good faith,
12 we are entitled to some kind of a slow-down in the process to allow us to
13 attempt to get a supervisory order in the event there is a turn over order,
14 because we think that that is clearly a lawyer's work product. And I am
15 just anticipating and laying the foundation for a, "Hey, let us get a chance
16 to go up in case of that." But we have to go through and find this stuff,
17 and it's in files relating to other litigation.

18 THE COURT: Um hum.

19 MR. CRAVEN: It's going to take one time to, well, mostly time,
20 it's going to take time. We will also present to the Court affidavits of
21 their lawyers involved, identifying the litigation, the nature of the
22 investigating work done by the consultants, and the reason for our firm
23 belief is that it's not discoverable.

24 THE COURT: Fine, good.

1 MR. CRAVEN: No problem. I have a feeling that you didn't say
2 yes you would give us---

3 THE COURT: No, I didn't say that. Well, do you have anything
4 you want to say on that?

5 MR. CARR: No. I think you have to see it first, and obviously
6 no point in arguing whether or not you should give them time. The Court
7 already knows our position. This is an ongoing lawsuit. We can't just sit
8 around and wait for counsel to try to stay parts of this case. We have no
9 time for that. We are rapidly, well, rapidly, very slowly getting to the
10 point where Plaintiff is going to rest, and there would not be time enough
11 to go up on any supervisory orders, and I know this Court is perfectly
12 capable of knowing what is discoverable and what is not.

13 THE COURT: The problem with allowing the time for any appellate
14 process to work has been in the last few instances where it has come up is
15 that things which should have been produced in my opinion before in
16 response to other matters are produced at the last minute in the midst of
17 their being relevant to what is at issue while the production has gone on,
18 while the in camera inspection has gone on, and then a request to halt
19 everything basically or halt the use of this in order to allow an appellate
20 review by supervisory order, or however to take place. And the timing of it,
21 especially in light of the fact that these materials were responsive to
22 matters filed a long time before in which context would have been no
23 practical problem, it has really made it a problem in the past. I have had
24 situations where I have ordered matters turned over, and I specifically

1 remember Mr. Heineman once asking me to hold up for ten days so they could
2 decide whether to do that or whatever. I can't commit myself one way or
3 another, is what I am trying to say, and it just depends, I don't know what
4 you are producing to me, and I haven't seen your arguments, I haven't seen
5 your affidavits, I am not about to prejudge an argument or do---I know I
6 can't anticipate what I am going to say.

7 MR. CRAVEN: I know, of course, that Justice Goldenherish will
8 recuse himself, and if we try to do this on an expedited basis, this would
9 put me into the position of going to the next closest Judge in the Supreme
10 Court trying to get a stay.

11 THE COURT: Okay, I didn't catch that.

12 MR. CRAVEN: That's what I was grinning at.

13 THE COURT: But I will take your arguments into consideration. I
14 hopefully if I have learned one thing, it's not to be sensitive about appeals.
15 But I have an obligation, I think, clearly to see that this lawsuit is
16 handled in the just and expeditious and fair manner, and I am making all of
17 my decisions in accordance with that obligation of mine, and I will make
18 any decision on this problem that you posed with that same standard as I
19 have in the past, and I will happily take your argument into consideration.
20 I understand the position you are in.

21 MR. CRAVEN: And they are doing the search as fast as they can.

22 THE COURT: Great, thank you.

23 (The following proceedings were held in open Court.)

24 CONTINUED CLARIFICATION EXAMINATION

BY MR. MUSGRAVE

Q Mr. Park, I think when we broke we were about to discuss with regard to Defendant's 880, the policy statement of the EPA regarding Section 8(e), that section dealing with the nature and sources of information which reasonably supports the conclusion of substantial risk. And I want to get into that, but before I do, I want to direct your attention to another section, the portion of the policy that also deals with this subject of information that reasonably supports the conclusion of substantial risk. Directing your attention to the first page of the Exhibit, the third column, paragraph that's numbered 3 there, do you see that?

A Yes.

Q Does the EPA in there in connection with its interpretation in any way refer to what they interpret reasonably supports the conclusion to mean?

A Yes, it does elaborate on that a little bit.

Q What does it say in that regard?

A Well, I'm looking, I'm skipping a little bit where it refers to comment received and so forth, or would you like me to read that?

Q Um hmm.

A Getting down, beginning about eight lines down in Item 3, "The administrator agrees that Section 8(e) addresses information that reasonably supports the conclusion of substantial risk." And it has deleted the "may suggest" provision, but emphasizes that "reasonably supports the conclusion of substantial risk is not identical to a conclusive demonstration of substantial risk."

1 Q All right. So there is or was a deletion in their interpretation
2 that the information that they were talking about was merely information
3 that may suggest--

4 A That was the EPA's first proposal. The EPA then changed that to
5 "reasonably supports the conclusion."

6 Q All right. Now, so this substantial risk information that has to
7 be reported under Paragraph roman numeral 6 on Page 3, again, that's what
8 we were starting to come to before lunch, there is a whole section dealing
9 with the EPA's interpretation of what information, what is the nature and
10 source of that information which reasonably supports the conclusion of
11 substantial risk, is there not, sir?

12 A Yes, there is.

13 Q And I note that there are two categories that are described, and
14 so enumerated, one and two in there, do you see those?

15 A Yes.

16 Q And we are now in the middle column of this page, are we not?

17 A Yes.

18 Q And the first category is entitled what, sir?

19 A Designed controlled studies.

20 Q And it reads as follows, does it, "In assessing the quality of
21 information, the respondent is to consider whether it contains reliable
22 evidence ascribing the effect to the chemical," is that what it states?

23 A That's correct.

24 Q And then it states, "Not only should final results from such

1 studies be reported, but also preliminary results from incomplete studies
2 were appropriate," is that correct?

3 A Right, that's correct.

4 Q Now, is the language there talking about reporting studies? Is
5 that the information that you read that to be referring to?

6 A That's correct, it's information obtained through studies.

7 Q In fact, the next sentence says, "Designed controlled studies
8 include," and then it talks about or refers to four different types of
9 designed controlled studies?

10 A That's correct.

11 Q So that's one type of information they are saying if you have that
12 supports the conclusion of substantial risk you must report; is that correct?

13 A That's correct.

14 Q Now then, Item 2, Paragraph 2 under this roman numeral 7, would
15 you read to us what the caption of that is, or the subcaption?

16 A The second category is titled, "Reports concerning and studies
17 of undesigned, uncontrolled circumstances."

18 Q The distinction between designed and controlled in one above, now
19 we are talking about undesigned and uncontrolled circumstances; is that right?

20 A That's correct.

21 Q And the language there, I direct your attention to the last
22 sentence in that column. It starts, "In addition," you see that, sir?

23 A Yes.

24 Q And it states, "In addition, it is possible that effects less

serious than those described in part 5(b), and those are the ones we talked about earlier, are they not?

A Yes.

Q Birth defects, death, cancer, things like that, it says, "may be preliminary manifestations of the more serious effects and together with another triggering piece of information constitute reportable information," then they give an example of that, do they not, sir?

A Yes.

Q And would you read that example to us?

A "An example would be a group of exposed workers experiencing dizziness demonstrating neurological disfunctions."

Q And in this Paragraph 2 under roman numeral 7 dealing with uncontrolled and undesigned studies, are they again talking about reporting effects that are observed in uncontrolled or undesigned studies; is that how you read that, sir?

A Yes. I think the conclusion of this Section 2 of, or Subsection 2 of Section 6 describes what would be included in the undesigned uncontrolled circumstances.

Q In fact, at the end there, they state that in the end of Subparagraph 2 under roman numeral 7 there, they state, "Reports," and I am reading now from the top of the third column on that page, the first full paragraph, "Reports and studies of undesigned circumstances include," and then they state medical and health surveys, clinical studies, reports concern evidence of effects in consumers, workers, or in the environment.

1 A Yes.

2 Q These are things that you might observe as effects, then?

3 A That's correct.

4 Q And that would be information that if you concluded it substantially
5 or as the language, if it was information which reasonably supported the
6 conclusion that your particular product, chemical, or mixture thereof
7 presented a substantial risk, that that would be the kind of information
8 even though it wasn't a controlled study, but yet an uncontrolled study that
9 you would have to report.

10 A Yes.

11 Q But in both instances here, under roman numeral 7, they are
12 talking about some type of observation of health effects or studies of
13 health effects, are they not, sir?

14 A That's right.

15 Q Is there anywhere in Paragraph 6, roman numeral 6 here where they
16 refer to reporting contents of a tank car or contents of a chemical?

17 A No.

18 Q Now, even going further into this policy, Hr. Park, roman numeral
19 7, the next major paragraph talks about information which need not be
20 reported, does it not, sir?

21 A Yes, it does.

22 Q Now, it's got then Subparagraph A, B, C, D, and E, and specifies
23 different types of information, does it not?

24 A Yes.

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Q And in each instance, sir, well, let's just take one as an example, Subparagraph C. It says information need not be reported, then going to C, has been published in scientific literature and referenced by the following abstract services. And then it lists a bunch of those, does it not?

A Yes.

Q And so there Subparagraph C, is it talking about published information literature regarding studies or health effects observed or studied?

A Yes.

Q And, for instance, Subparagraph D. Again, it says it need not be reported if it is corroborative, well-established, adverse effects already documented in the scientific literature and referenced as described in C above, does it not, sir?

A Yes.

Q And then it says, unless such information concerns emergency incidents of environmental contamination as described in part 5(c), that's when you have an environmental spill type thing?

A Yes.

Q But again, it's talking about information of adverse effects already documented; isn't that right?

A That's correct.

Q Is there any place in Paragraph roman numeral 7 where they talk about information that need not be reported where again there is any reference

to a reporting requirement as to the contents of a tank car as to the make-up of the tank car or what kind of chemicals are in there or something of that nature?

A No, it doesn't appear to be.

Q Now, Mr. Park, if then in assessing a situation, one has no substantial risk information, has no information in their possession which reasonably supports the conclusion that a particular product presents a substantial risk, they then, are they then required or not required to make a reporting under Section 8(e) as you interpret it?

A If they have no information indicating a substantial risk, there would not be an 8(e) reporting obligation.

Q And if they have such information, but they know that the EPA is already aware of that information of those adverse effects from that particular chemical as it is composed, then do they have to report it?

A No, then there is no reporting obligation.

Q Now, is there any place in this entire policy statement, sir, where there is any reference to the information that the EPA is talking about, the statute is talking about, is there any reference where information is used in the context of requiring the reporting of the chemical contents of the tank car as opposed to the health effects that are believed to come from the particular chemical?

A No reference.

Q Now, Mr. Carr had you or put up on this Plaintiff's Exhibit 1298, these various factors, considerations that you had mentioned in your testimony.

ERASABLE

EXHIBIT DOCUMENT

1 And the first one that you indicate was must be produced by a party
2 considering notification for a commercial purpose, and I think everyone
3 understands what that means, it is a product that's actually going out
4 into commerce; is that correct?

5 A Yeah, I think the wording is I tried to point out earlier when
6 it came out is a little bit out of sync, but item 1 means the party
7 considering notification must be producing the chemical for a commercial
8 purpose.

9 Q The party that is looking at it to determine whether or not they
10 should notify must be producing a product that goes into commerce?

11 A Yeah.

12 Q Then 2 is must be evidence chemical presents substantial risk of
13 injury to health, and when you use the word evidence, were you talking
14 about what?

15 A Really, it's information. There must be information which
16 reasonably supports the conclusion that the chemical presents a substantial
17 risk of injury to the health of the environment.

18 Q That is the mixture of chemicals that you are looking at in
19 that particular instance?

20 A Yes.

21 Q And then you told him the EPA must not already been aware of it,
22 and it in this case would be that information that you have which reasonably
23 supports the conclusion that the chemical or the mixture does present a sub-
24 stantial risk of injury to health or the environment?

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1 A That's correct.

2 Q Now, let me get this out of the way. Mr. Park, if you would,
3 do you have Plaintiff's Exhibit 1241 up there? That would be your meeting
4 of January 6, 1981 reported by your memorandum dated January 7, 1981?

5 A No, I don't have that.

6 Q All right. Let me see if I can't find it for you. Let me hand
7 you Plaintiff's Exhibit 1241. And that is the copy of the minutes that
8 Mr. Carr marked with regard to the 8(c) meeting you had on January 6, 1981;
9 is that correct, sir?

10 A Yes.

11 Q Now, when you convened to consider in this instance 2,4-Dichlorophenol,
12 what was it that you were looking at, sir, in particular?

13 A A memo dated October 10, 1980.

14 Q Um hum.

15 A Which described the results of analyses of 61 samples of chloro-
16 phenols for the presence of chlorinated dibenzo-p-dioxins.

17 Q So you were looking at the 2,4-Dichlorophenol in connection with
18 a report of parts per billion of TCDD in it; is that correct?

19 A Yes.

20 Q And determining whether that 2,4-Dichlorophenol so, if you will,
21 contaminated or with that level of impurity in it was something that
22 constituted a reportable item under Section 8(e).

23 A That was what was being considered.

24 Q And in looking then at the 2,4-Dichlorophenol, were you looking

2025 RELEASE UNDER E.O. 14176

1 at the level of the TCDD?

2 A I think we were really considering whether the Dichlorophenol
3 with whatever TCDD may have been contained as indicated by these samples
4 would present a substantial risk of injury.

5 Q And in fact you conclude, do you not, in Paragraph 4 that the
6 extremely low levels of TCDD found in the Dichlorophenol, particularly
7 with further dilution, diluted by customers' operations would be unlikely
8 to cause any health or environmental hazards?

9 A Yes.

10 Q So you were looking at the entire chemical and looking at the
11 levels within the chemical?

12 A Yes.

13 Q The levels of TCDD?

14 A Yes.

15 Q Now, did you consider at this January 7 or January 6, 1981 meeting
16 after you considered the levels that were there whether you had any
17 information such as we have just talked about as described in the policy
18 statement, whether you had any such information that from which you can
19 reasonably conclude that TCDD at that level would present a substantial
20 risk of injury to health or the environment?

21 A Well, I note a sentence in the end of the fourth paragraph.

22 Q All right, sir.

23 A Says, "No attendee at the subject meeting was aware of any harm
24 which has been caused to health or the environment as a result of the trace

amount of TCDD present in Dichlorophenol.

Q You obviously had no studies that said that TCDD at that level in that product was going to cause substantial or presented substantial risk of injury to health of the environment, you had no studies?

A No, we did not.

Q But as we pointed out, Dr. Park--excuse me now, Mr. Park, now I'm doing it--the type of information that the policy talks about, undesigned and uncontrolled circumstances, that would be observations of health effects; is that correct?

A Yes, that's right.

Q And there was review made there to see whether you had any such information from observation of health effects; isn't that correct?

A Yes.

Q Now, likewise, with the May 11 and the May 22 meetings in 1979 on 2,4-Dichlorophenol, Plaintiff's Exhibit 1275, do you have that one up there, sir?

A I don't believe I do.

Q There's 1275. This is your memorandum dated June 6, 1979, and refers to two meetings, one on May 11 and one on May 22, and this was the 8(e) meeting where you considered, as I recall, 2,4,6-Trichlorophenol in the 2,4-Dichlorophenol and whether that constituted a reportable item, if you will, under Section 8(e)?

A Yes.

Q And the thrust of the second, I should say, well, I don't think

1 the first meeting; is that right?

2 A That's right. And this resulted from the, a notice in the Federal
3 Register about this, this study which had been done by the National Cancer
4 Institute, but it was just like a brief reference in the Federal Register,
5 the entire study had not been put into the Federal Register. So at the May
6 14 meeting it was felt that the entire study in fairness, because when
7 something is condensed down or there is a brief summary of something, it
8 is felt something might have been omitted. So it concluded that in fairness
9 the entire study should be obtained and should be reviewed and that the
10 meeting would be reconvened after it had been accomplished.

11 Q All right. And then Dr. Paget was asked to look at the study in
12 detail?

13 A That's right. The study was obtained and was reviewed by Dr. Paget.

14 Q But pending a review of this information which had now come to
15 your attention, did you not also at this committee meeting on May 11
16 determine any other information that would be reportable information under
17 Section 8(e), that would be information that reasonably supported the
18 conclusion that there was a substantial risk of injury to health or the
19 environment as a result of the levels of 2,4-Trichlorophenol and 2,4-Dichloro-
20 phenol?

21 A Yes. Experience with the product itself was considered and it
22 was pointed out that although it had been in use for many years, at least
23 forty years, according to the memorandum, there were no known health effects,
24 adverse health effects to health or the environment.

1 Q So from the observations that those present were aware of or had
2 made themselves, there were no information from those observations as to
3 adverse health effects such as described under 8(e) policy that would
4 constitute under that policy in any way a substantial risk?

5 A That's correct.

6 Q And that is the type of information I believe we talked about
7 before that the policy seems to be talking about in Section roman numeral
8 6 under Subparagraph 2?

9 A Yes.

10 Q All right. So then you reconvened on May 22, had the report from
11 Dr. Paget as to his review of this information, and the conclusion then
12 at the end of both of these meetings or the end of the May 22 meeting was
13 that there was no information to report, it was not a reportable item?

14 A That's right.

15 Q In fact, sir, your June 6th memo, the one that reports on both of
16 these meetings, Plaintiff's Exhibit 1275, you state at the bottom of it as
17 Mr. Carr has already covered with you the conclusions and recommendations
18 and the first number under that reads as follows, does it not, "The inform-
19 ation evaluated does not reasonably support the conclusion that 2,4-Dichloro-
20 phenol produced and marketed by Monsanto presents a substantial risk of
21 injury to health or the environment"?

22 A That's correct.

23 Q So you were evaluating that information to see if it was reportable
24 information, were you not, sir?

1 A Yes.

2 Q Now, do you have up there, Mr. Park, Plaintiff's Exhibit 1298,
3 that would be the December 14, 1981 8(a) meeting?

4 A Yes, I do.

5 Q All right. Let me be sure I've got it. Now, that is another one
6 of the 8(e) meetings that Mr. Carr has questioned you about, and this one
7 dealt with again 2,4-Dichlorophenol, but this time you were looking at
8 the chlorinated dibenzofurans; is that right, sir?

9 A That's right.

10 Q Now, was there any study that the group was looking at in this
11 instance to determine if it constituted substantial risk information as
12 described in the EPA policy statement that should be reported?

13 A This was not really a study indicating health effects.

14 Q All right. Someone had requested this 8(e) meeting because of
15 the presence of the dibenzofurans?

16 A Yes.

17 Q And the group met and didn't the group determine if it had any
18 information from which one could reasonably or which would reasonably
19 support the conclusion that the level of dibenzofurans in the 2,4-Dichloro-
20 phenol presented a substantial risk of injury to health or the environment?

21 A It was concluded that notification was not required by Section
22 8(e), Mr. Muagrave.

23 Q Yes.

24 A This 1298, though, is not the final minutes of that meeting.

1 Q That's correct, sir. We marked earlier, didn't we, the final
2 ones after the corrections?

3 A Okay.

4 Q Do you have that Defendant's 882 there, I believe?

5 A Yes, I do.

6 Q All right. Let's look at that. Those are the final minutes after
7 you had the people with the expertise and the toxicology and what have you
8 review them; isn't that right, sir?

9 A That's right.

10 Q And is there a discussion at all in those minutes about consideration
11 of whether you had any information that constituted substantial risk inform-
12 ation as we've talked about in this policy statement?

13 A There is no discussion of a study indicating adverse health effects.

14 Q But there are references to information, are there not, sir?

15 A Yes.

16 Q As an example, in the third paragraph, does it not say, the
17 second sentence starting there, "The limited information available generally
18 supports the conclusion that the acute toxicity of CDF is approximately an
19 order of magnitude less than the acute toxicity of chlorinated dibenzodioxins"?

20 A Yes.

21 Q Also, it was noted that no 2, 3, 7, 8 dibenzofurans were found
22 in the 2,4-Dichlorophenol?

23 A Yes.

24 Q And then does it not state levels of up to 100 ppb 2, 3, 7, 8

1 tetrachlorodioxin have been believed to be safe levels by some toxicologists
2 for 2,4,5-T?

3 A Yes.

4 Q States then further, PCBs containing CDF as impurities have been
5 extensively studied?

6 A Yes.

7 Q A recent review of the extensive data on PCBs has led to the
8 conclusion that there are no significant human health hazards from low
9 exposure; isn't that right?

10 A That's correct.

11 Q So you reviewed what information you did have and concluded, let
12 me ask you, did you conclude that you had no information which reasonably
13 supported the conclusion that the level of dibenzofurans in your 2,4-Dichloro-
14 phenol presented a substantial risk of injury to the health or environment?

15 A That's correct. We had no information.

16 Q So you had no information, it was a non-report matter under 8(e)?

17 A That's right.

18 Q So Mr. Park, in all of these 8(e) meetings Mr. Carr has had you
19 refer to, has there not been consideration of either studies or information,
20 do we have information that supports a conclusion that reasonably supports
21 the conclusion that there is some adverse health effect that constitutes a
22 substantial risk with this product and the various constituents in it?

23 A Yes.

24 Q And I believe, well, strike that. You have the Tetrathal or

1 Tetrathal 8(e) meeting up there, Plaintiff's 1297?

2 A No, I do not have that one.

3 Q All right, sir. There it is. Now, this meeting on January 23rd,
4 1985 reported in your January 24th, 1985 memorandum on Tetrathal, once
5 again, is there reference in there to a consideration as to whether or not
6 Monsanto or any of the persons I should say present at the meeting had any
7 information that reasonably supported the conclusion that the Tetrathal with
8 the levels of impurities in it, the levels of dioxin impurities in it
9 presented a substantial risk of injury to health or the environment?

10 A Yes, I think so.

11 Q And what is that, sir?

12 A I would refer to, I guess, the fourth and fifth paragraphs.

13 Q All right. And would you tell us what is stated there that you
14 feel is responsive to my question?

15 A In the fourth paragraph, it was stated, it was noted that Tetrathal
16 had been manufactured and marketed for around twenty years with no indication
17 of significant injury to health or the environment. It is presently being
18 manufactured at the Delaware River plant.

19 THE COURT: I didn't hear the last--

20 A It is presently being manufactured at the Delaware River plant.

21 Q All right, sir.

22 A There have been occasions of which certain workers appear to be
23 unusually sensitive to the product and would develop a rash when exposed to
24 it. When this occurred, the exposure was promptly terminated and the rash

1 disappeared with no after effects. No other effects from exposure to
2 Tetrathal have been noted.

3 Q So this was a consideration, sir, of whether you had information
4 that would be considered an undesigned or uncontrolled circumstance under
5 Section roman numeral 6 of the policy?

6 A Yes.

7 Q And you had no such information?

8 A That's correct.

9 Q Is there anything else, then, in the memorandum that refers to
10 information you considered to determine whether or not you had information
11 that was substantial risk information reportable?

12 A Yes, the fifth paragraph reads, "It was noted that the spectrum
13 of polychlorinated dibenzo-p-dioxins found in Tetrathal is similar to that
14 found in pentachlorophenol, except that it is at a much lower concentration
15 in Tetrathal, while the U.S. Environmental Protection Agency is aware of
16 the concentrations of PCDD in penta, the manufacture, distribution, and use
17 of penta is continuing."

18 Q And so that was information that was not the type reportable, and
19 I take it was in fact used in reaching the conclusion that you did not even
20 have any serious effects here to be concerned with?

21 A That's right. I think the bottom paragraph in the first page also
22 bears a little bit to this.

23 Q All right. Would you tell us what is in there that you feel is
24 responsive to this situation?

1 A It was further noted that while ultra trace analysis did indicate
2 that Tetrathal contained trace amounts of higher chlorodibenzo-p-dioxins,
3 no product analysis indicated the presence of Di-, Tri-, or Tetrachlorodibenzo-
4 p-dioxin. Present available information on the toxicity of higher chlorinated
5 dioxins indicates that the low concentrations present in Tetrathal
6 particularly when considered with the uses to which Tetrathal is put do
7 not present a hazard.

8 Q All right, sir. So here again information is considered. Do we
9 have any information, and the conclusion is we don't have information that
10 reasonably supports the conclusion, and that includes this type of informa-
11 tion such as the uncontrolled studies, uncontrolled circumstances in
12 reaching our conclusion in these minutes; isn't that right, sir?

13 A That's correct.

14 Q Now, in view of the policy and the provisions of the policy that
15 we've just gone through and the review of these minutes with regard to
16 considerations of information, you testified, as I recall, when Mr. Carr
17 asked you a question, and I have this written down and I believe it's
18 correct, I thought you said, "Monsanto had no duty to report hazardous
19 levels as such under the law"?

20 A (Witness responded by nodding head affirmatively.)

21 Q Under 8(e).

22 A Yes. My response was in context. Section 8(e) is a general
23 reporting requirement only when there is information reasonably supporting
24 the conclusion that a chemical presents a substantial risk of injury to the

environment. There is no other under 8(e); there is no set reporting requirement of levels of chemicals.

Q All right. It's the information, the studies, the observations of health effects that say that this is a reason or this is a substantial risk; is that right?

A Yes.

Q It is a reporting of information?

A Yes.

Q Not levels. Now, would, though, let me ask you this, Mr. Park, if you had a level of a chemical in a product and Mr. Carr asked you these questions before, I believe, that you, you had a product that you believed contained no harmful contaminants, and all of a sudden you found that because something was wrong with the process or what have you, all of a sudden you had a shipment that went out or something that had some very harmful contaminants that would amount to a substantial risk under this policy that would cause these serious effects, and even though this particular contaminant and the effects that it could have were known to the EPA, well, let me back off a minute. Strictly under 8(e), would you have a duty to report information that the EPA already had with regard to those health effects?

A Under those, if the EPA already had the information, I think there is difficulty here, because the one sentence statute is written in such general terms, and a case could be made that no actual reporting obligation exists. However, in those circumstances, I suspect that we would,

1 if the shipment that you described in the example you gave, if the tank car
2 had left the company, I think that we would do two things. We would probably
3 notify the customer immediately, we would probably also make some contact
4 with the carrier, and I think we would probably inform the EPA.

5 Q Even though under the interpretation of the law as you read it
6 here, it is not a strict requirement to report the chemical content when
7 the EPA has knowledge of the effect of what's in there?

8 A Yes, if I stated it correctly, the EPA would have knowledge of
9 the adverse health effects which could result from exposure to the, what's
10 in that tank car. But if our--at an 8(e) meeting, our technical experts,
11 toxicologists and so on, felt that there was a substantial, could be a
12 substantial risk of injury, I think that we could report that.

13 Q Now, is the fact that there have been no interpretations of this
14 statute in any way enter your thinking with regard to what you just testified
15 to?

16 A Not to what I just said, but interpreting this, I think, will be
17 easier if and when it is clarified.

18 Q All right. But as you read the statute and as you read the
19 policy, it speaks only to reporting information that the EPA doesn't have
20 with regard to health effects, studies, or observations?

21 A That is certainly the primary thrust of it.

22 Q But if you--but nonetheless under the circumstances posed, even
23 though it may not be something that could be, that you would interpret
24 under the policy of the statute to be reportable, you feel you would report

1 it?

2 A I think under those circumstances we would, yes.

3 Q Would you rely upon the advice with regard to whether there was
4 an adverse health effect at the particular level you were looking at in a
5 particular chemical, rely upon your toxicologist, your medical people, what
6 have you, I mean, you would yourself?

7 A I would have to, yes.

8 Q Now, Mr. Park, can anyone call an 8(e) meeting or require that
9 an 8(e) meeting be held at Monsanto? How does that work?

10 A This is described in our little 8(e) practice or procedure that's
11 recirculated annually to make sure everybody is aware of it.

12 Q Is that Defendant's Exhibit 881, sir?

13 A That is the one that went out for one year, if I am correct
14 about the number now, that's right.

15 Q Do you have that there?

16 A Yes, I do.

17 Q All right.

18 A And actually, as it states, it's circulated to everyone in the
19 company at grade level 34 or above.

20 Q All right. What does that mean?

21 A I'm sorry, I can't tell you exactly what that means, not being
22 a personnel department man. But I would, I think that that would be, would
23 mean roughly that it would go to certainly all professionals that would, in
24 my opinion, it would go to professionals, chemists, laboratory personnel,

NEWLOCK
PRAGMATIC

1 toxicologists, et cetera, I would think almost everyone, no, secretaries,
2 clerical personnel probably would be below grade 34. I think all those with
3 technical educations would receive it, roughly. And actually anyone,
4 though, to answer your question about who can request an 8(e) meeting, I
5 think pretty much anyone can, if he feels he has become aware of information
6 which conceivably could support a substantial risk situation, he could and
7 should request an 8(e) meeting.

8 Q And in fact, the fourth page of this exhibit, Defendant's 881, is
9 captioned "Internal Procedures for Transmittal of Substantial Risk Information
10 to the Director of DMEH, Monsanto Company," and going down to the fourth
11 paragraph there, sir, would you read to us what is the stated policy there
12 with regard to information?

13 A Yes. It says, "Anyone obtaining information of the type described
14 above should immediately submit such information to a supervisor."

15 Q And the type of information described above, that's a reference to
16 what, sir?

17 A That would be the reference to the first paragraph. It says, "Any
18 information which reasonably supports the conclusion that a chemical substance
19 or mixture manufactured, processed, or distributed in commerce by the company
20 present a substantial risk of injury to health or the environment."

21 Q All right. And just turning to Page 2 of the policy, sir, this
22 is a supplement to the policy, is it not?

23 A Yes, um hum.

24 Q And down the fifth paragraph, after there is a statement there,

first of all, is there not, with regard to what constitutes substantial risk?

A Yes.

Q So that the people that receive this will have some idea of what is to be looked for, what we are talking about here; isn't that right?

A That's correct.

Q And then if you would, sir, read that second paragraph starting with "These criteria"?

A "These criteria need to be weighted differently for different types of effects, both human and environment. If there is any doubt as to whether information should be reported, it should be submitted in accordance with our procedures to your designated organization unit individual for review by the committee established for this purpose."

Q I'm sorry, go ahead.

A "It should be noted that information need not be reported if you have knowledge that the EPA already has been informed of it or it has been published in the scientific literature."

Q So the policy of Monsanto as announced in this document is if anyone has any doubt as to the information that they have come in contact with is such information that they should report it and let it get to the committee for the committee to review?

A That's correct.

Q And is there a statement in this policy also with regard to employees' rights?

A That's correct.

HEMALOOK

PARABLES

1 Q And would you tell us what that statement is, sir?

2 A All right. And this statement is to relieve any employee of any
3 inhibitions about his obligation to raise a question of 8(e) meetings. It
4 reads, "Monsanto's policy and its internal substantial risk reporting
5 procedures state that employees who submit information through company
6 channels will be notified of action taken, together with the reasons for
7 such action. If the employee disagrees with the company's decision that
8 the information need not be reported, he has the right to report such
9 information directly to the EPA." And the act provides, "that no employer
10 may discharge or otherwise discriminate against an employee because that
11 employee assisted or participated in an action to carry out the purposes
12 of the act."

13 Q So Monsanto is informing that no action can or no action will be
14 taken by Monsanto nor can be taken under the auspices of the law?

15 A That's right.

16 Q If they don't agree with Monsanto's position and report it to
17 the EPA anyway; is that correct?

18 A That's correct.

19 THE COURT: Mr. Musgrave, is this a good point for a short break?

20 MR. MUSGRAVE: I think it is, your Honor.

21 THE COURT: Ladies and gentlemen, we will take a short recess at
22 this time and then resume testimony. The Court is in recess.

23 (At this time Court was in recess.)

24 BY MR. MUSGRAVE:

HEMLOCK
AVAILABLE

1 Q Mr. Park, I think we were talking about Monsanto's or Defendant's
2 881 and the information put out by Monsanto to various employees when we
3 recessed. And I think we had covered everything in that, but I wanted to
4 draw your attention to for a moment, I'd like to come back to Defendant's
5 880, the policy statement of the EPA. We had talked about most of the sub-
6 headings in there under the roman numerals. I'd like to draw your attention,
7 though, to roman numeral 9, the reporting requirements. That would be the
8 fourth page of the exhibit. Do you have that, sir?

9 A Yes, I do.

10 Q And this is the section of the policy that sets out those things
11 that a notice to the EPA when notification is deemed to be required, what
12 it should contain?

13 A That's correct.

14 Q And A refers to it should be sent by certified mail or any other
15 way permitting verification of this receipt, and B, that it should be
16 stated that it is submitted in accordance with Section 8(e), and C, the
17 name of the person, the address of manufacturer submitting this information,
18 and then D says to identify the chemical substance or mixture; is that
19 right, sir?

20 A That's correct, um hmm.

21 Q And then E, would you read E to us, sir?

22 A E says, "Summarize the adverse effects being reported, describing
23 the nature and the extent of the risk involved."

24 Q So there it's talking about reporting the health effects that you

1 feel make this a reportable item; isn't that correct?

2 A Yes. Health effects, or there could be environmental effects.

3 Q All right. And what does F say, sir?

4 A F says, "Contain the specific source of the information, together
5 with a summary and the source of any available supporting technical data."

6 Q So they want a summary of the adverse effects, and then they want
7 you to say where you got the information, how you got it?

8 A That's right.

9 Q Do these reporting requirements then corroborate your understanding
10 that the policy and the statute would clearly seem to be talking about
11 reporting information about adverse health effects?

12 A I think it does. Adverse health effects and possibly environmental
13 effects.

14 Q Now, statutes once interpreted are sometimes interpreted broadly,
15 are they not, sir?

16 A Yes.

17 Q And sometimes they are interpreted narrowly, are they not, sir?

18 A That's correct.

19 Q And people have varying opinions, lawyers have varying opinions
20 as to whether a statute will or will not be interpreted in a particular way
21 or not in a particular way?

22 A That's certainly true.

23 Q And since sometimes they are interpreted just like you think they
24 are going to be interpreted?

1 A That's right.

2 Q Rarely, but it does happen, doesn't it?

3 A That's correct.

4 Q For that reason, sir, would that situation play any role in the
5 determination of Monsanto to report what might be a hazardous level in the
6 health effect of a chemical even though they believe EPA has got the
7 information?

8 A I think if there were some doubt, if it was a little bit fuzzy, we
9 would lean toward reporting the information.

10 Q Now, I want to come back to this Tetrathal meeting that would
11 be Plaintiff's Exhibit 1296. Do you have that, sir?

12 A 1296?

13 Q I'm sorry, 1297.

14 A Yes, I do.

15 Q Now, that meeting was apparently generated, sir, because of
16 Dr. Nair's memo of January 14, that's Plaintiff's Exhibit 1296. Do you have
17 that up there?

18 A It was up here.

19 Q I set it there for you because I knew we would be coming to it.

20 A I know it was up here, yeah, here it is, yes.

21 Q You have 1269?

22 A Yes.

23 Q And do you also have Plaintiff's 1299, Dr. Levinska's memorandum
24 to Dr. Rousch which regards that report?

EXHIBIT CONTENT

1 A Yes, um hum.

2 MR. MUSGRAVE: Was the jury given a copy of Dr. Levinskas' report,
3 Mr. Carr?

4 MR. CARR: Yes.

5 MR. MUSGRAVE: 1299?

6 MR. CARR: Yes.

7 Q So we have 1296, the committee minutes, 1296, which is Dr. Nair's
8 report, and 1299, which is Dr. Levinskas to Dr. Rousch with regard to
9 Dr. Nair's report; is that correct?

10 A Yes.

11 Q Now, were there other documents available to you at that meeting,
12 sir, besides Dr. Nair's report and Dr. Levinskas' report?

13 A Yes, there were. As the minutes of a meeting indicate, in the
14 second paragraph, additional information was brought by, I guess it was
15 Dr. McCarland, I believe.

16 (Defendant's Exhibit 884 was marked for identification.)

17 Q I'm handing you now what's been marked as Defendant's 884.

18 A Yes.

19 Q Can you identify that, sir?

20 A Yes. This is the information that was brought to the meeting by
21 Dr. McCarland.

22 Q Now, the first two pages of Defendant's 884 is information apparently
23 supplied by J.W.D. Those are the initials I see at the bottom of the page.

24 MR. CARR: J.D.W., James D. Wilson.

MEMORANDUM

MR. MUSGRAVE: Yes, I know, sir.

A Yes, that's right.

Q You understand that to be James Wilson?

A I think those are his initials, yes.

Q And then the next two pages is a cover letter and report from Dr. Hileman, Fred Hileman, which I believe has the results of the Tetrathal studies for dioxin content; isn't that correct?

A That's correct.

Q And then the next page is a letter or a memo from a J.L. Wolfsburger to Nair, Levinskas, Papageorge, et al., regarding Tetrathal monitoring results?

A Yes.

Q And in fact, that memorandum deals with monitoring studies of the workers' exposure to Tetrathal in the work place?

A Yes.

Q Now, Tetrathal, is that a liquid or a flake, sir?

A I think it's a flake, it's not a liquid.

Q And in fact, the Wolfsburger memo is referred to by Dr. Wilson in his write-up, the first two pages, doesn't he refer to that on the second page there, we will come to it in more detail, but I just wanted to point out that Dr. Wilson was using information from Mr. Wolfsburger in the report that he gave to the committee; is that correct?

A That's correct.

Q On the monitoring of the exposure to the workers of the Tetrathal

flake; is that right, sir?

A That's correct.

Q And then the next page after that is just a note from a Mr. Ashley Peter to J.D. Wilson reflecting the closing of relevant pages of two articles dealing with the toxicity of certain chlorinated dibenzodioxins?

A That's right.

Q And that information forwarded by Mr. Peter appears to be also referenced in Mr. Wilson's first two pages of this exhibit, is that not correct?

A Yes.

Q So paragraph C there talks about toxicity and then it says as a reference, "Summary prepared by A. Peter attached."

A That's correct.

Q And the last two pages of this document are in fact the attachments to the Peter memo, the information about toxicity and what have you that he passed on to Dr. Wilson who in turn put it in his memo; isn't that right?

A That is right.

Q So you had this other information that we have just gone through available at this 8(e) meeting?

A Yes.

Q Now, if we can kind of talk about the various elements or various things now in Dr. Nair's report, in connection with this other information that you had, now if you would, let's look at Dr. Nair's report as Plaintiff's 1296. Now, in reaching her conclusion, is there a statement here with

1 regard to the absorption that she assumed in connection with the inhalation
2 of this Tetrathal, because it is a flake, it gets in the air, doesn't it,
3 sir?

4 A Yes.

5 Q Is there a statement in there to that effect?

6 A Yes. She assumed 100 percent absorption.

7 Q One hundred percent absorption of the amount of Tetrathal in
8 the air?

9 A That's correct.

10 Q That is what was breathed in? Now, in the consideration of the
11 committee, was there information from Dr. Wilson that in any way supplied
12 more information about that assumption, particularly, I would refer you to
13 Subparagraph C of the Wilson information, Defendant's 884, that's on Page 2?

14 A Yes.

15 Q All right, sir. Is there any reference there to anything dealing
16 with that assumption of 100 percent absorption by inhalation?

17 A Yes. It states here that respiratory protection is worn by
18 workers in the work place.

19 Q All right.

20 A And assume 90 percent protection.

21 Q And an inhalation volume of $10\text{m}^3/\text{shift}$, a mean dust level of
22 $2.9\text{ mg Tetrathal}/\text{m}^3$, and it refers to the Wolfsburger memorandum?

23 A Yes.

24 Q And then complete absorption of all inhaled dust?

1 A Yes.

2 Q Do you recall, sir, whether the committee in then referencing the
3 Wolfsburger memo with regard to studies there of Tetrathal exposure in the
4 workplace and the monitoring program and the comments of Dr. Wilson with
5 regard to the respiratory protection whether there was any, it had any effect
6 on the statement of Dr. Nair about the 100 percent absorption from inhalation
7 of Tetrathal, if you recall one way or the other?

8 A I frankly just don't recall that.

9 Q All right. Now, another point with regard to, you will see in
10 Dr. Nair's memo down at the bottom, she says that, 'The potential calculated
11 daily intake exceeds the virtually safe dose by a factor of 1000'?

12 A Yes.

13 Q And that is a virtually safe dose as apparently stated by the
14 National Research Council of Canada with regard to 2, 3, 7, 8 TCDD?

15 A That's right.

16 Q Is that right?

17 A That's right.

18 Q And it says that at least according to the National Research Council
19 of Canada is 30-90 ng/day?

20 A That's right.

21 Q Now she is then saying that the daily intake that she calculated
22 exceeds that virtually safe dose by a factor of a thousand; is that right?

23 A That's what she says here.

24 Q Now, the exposure that she calculated on a basis of fg/kg/day, is

1 that reported there immediately above that paragraph at 12,800?

2 A That's right.

3 Q Now, if the safe dose is 30 to 90 per day, and she says that in
4 her calculations she is finding 12,800 per day is 90 1000 times, or is
5 12,800 1000 times greater than 90?

6 A No, it isn't.

7 Q What would it be, sir?

8 A I think it's something sort of less, like 140 times or 150 times,
9 something in that range.

10 Q You would divide 90 into 12,800?

11 A Yes.

12 Q And that would be something around 142 times, wouldn't it?

13 A Right, yes.

14 Q And if in fact your calculations and my calculations and your
15 understanding and my understanding of this document is correct, then she
16 misspoke when she said it was 1000 times above the virtually safe dose,
17 right?

18 A Yes.

19 Q In fact, if we are correct, it's only 142 times; is that right?

20 A Yes.

21 Q Now, also, sir, she was talking about a safe dose of 2, 3, 7, 8.
22 Is that what it says?

23 A That's right.

24 Q And after she references this Canadian Council statement on

1 2, 3, 7, 8, she then states as follows, "It has been shown that 2, 3, 7, 8
2 TCDD is the most toxic dioxin and the potential risk for other," and I
3 guess that's from other, it's a typo, I guess, "other chlorinated dioxins
4 would be relatively lower, but without the appropriate data (carcinogenicity
5 data on hepta and octachlorinated dioxin) it is difficult to determine how
6 much lower," right?

7 A That's right.

8 Q Now, her calculations with regard to 250 parts per billion being
9 assumed as the average amount apparently of contaminant, apparently we
10 are not assuming any 2, 3, 7, 8, as Mr. Carr has suggested, and you see that
11 250 parts per billion reference at the top of this second page of her report,
12 do you not?

13 A That's right.

14 Q Now, did you have any other data at this meeting that gave you
15 information as to the difference in toxicity between 2, 3, 7, 8 and some of
16 these other chlorinated dioxins? Let's first of all look at Dr. Levinskas'
17 memorandum after reviewing her report.

18 A Dr. Levinskas took issue with her using the Canadian number for
19 the tetra.

20 Q Well, do you have Plaintiff's Exhibit 1299 there?

21 A Yes, I do.

22 Q And first of all, in the first paragraph of that, he reports that
23 he is attaching her memo and he sends this to Dr. Rousch, doesn't he?

24 A Yes.

1 Q And then in the second paragraph, would you read that first
2 sentence to us?

3 A "Since TCDD was found only in waste dust at 1.5 parts per
4 billion, the calculations regarding potential PCDD exposure from Tetrathal
5 represent an extreme situation which greatly exaggerates the risk."

6 Q And the calculations that he is talking about which he feels
7 greatly exaggerates the risk, do you know whether or not that references
8 Dr. Hair's memo as attached?

9 A I assume that it does.

10 Q And then does he not go on and give some information about the
11 relative toxicity of 2, 3, 7, 8 to there, the fourth paragraph, he talks
12 about pentachlorodioxin and compares its toxicity at least as to guinea pigs
13 to 2, 3, 7, 8, does he not?

14 A Yes, um hum.

15 Q And then he talks about another form of pentachlorodioxin, which
16 has an oral LD 50 of 1125, whereas in the guinea pig, it's for 2, 3, 7, 8,
17 it's 3.1, some, over 300 times less toxic, right?

18 A Yes.

19 Q And then he talks about three hexachloro isomers with LD 50s of
20 the 60 to 100 range; is that right?

21 A Yes.

22 Q And that would be 30 to, or I should say, 20 to 30 times less
23 toxic at least than the 2, 3, 7, 8 as to guinea pigs, correct?

24 A Yes.

1 Q And then the last sentence he talks about octa isomers that
2 would be the octodibenzochlorodioxin?

3 A Yes.

4 Q Or do you know?

5 A I assume that means the eight.

6 Q And he says they are reported to have LD 50 values in the gram
7 per kilogram?

8 A Um hm.

9 Q Which would be many, many, many, many more times less toxic than
10 the 3.1, and I think the ug is microgram?

11 A Yes.

12 Q So here is Levinskas, is he not then supplying the committee with
13 some of this information as to relative toxicity?

14 A That's right.

15 Q In fact, in the next paragraph he talks about mixtures of hexa-
16 chlorodioxin being fetotoxic and producing fetal abnormalities and edema in
17 pups at dosages higher than 2, 3, 7, 8 TCDD; isn't that correct?

18 A Yes.

19 Q So again he is giving more information about the relative toxicity?

20 A That's correct.

21 Q And then he states at the end there that the octachloro isomer
22 produced no fetal abnormalities even at considerably higher dose?

23 A Yes.

24 Q And of course Dr. Nair in her memo was saying we need or we don't

1 have enough information in her belief, or she doesn't have information
2 on the relative toxicity of the hepta and the octachlorinated dioxins,

3 that's what she is saying?

4 A In fact, yes.

5 Q So Dr. Levinskas provided the committee with some more, did he
6 not?

7 A Yes, he did.

8 Q And the memorandum from Dr. Wilson, Defendant's 884, the jury
9 doesn't have this, but do you see in there references to toxicity also,
10 sir, of the various chlorinated dibenzodioxins?

11 A Yes.

12 Q And in fact in Subparagraph D of Dr. Wilson's memo, it reads as
13 follows, does it not, "In particular, octochlorodibenzodioxin in 1, 2, 3, 4,
14 6, 7, 8 heptachlorodibenzodioxin are found to be practically nontoxic?"

15 A Yes.

16 Q And also on Page 2 of Dr. Wilson's memo, does he not do some
17 calculations with regard to the expected intake by workers when these
18 respirators are involved and what have you?

19 A Yes.

20 Q And I see up there in Subparagraph A and B he talks about mean
21 total chlorodibenzo content of the product?

22 A Yes.

23 Q Now, did Dr. Naft use the mean total, or does it reflect what she
24 used?

1 A She says she uses the word average, I believe.

2 Q All right. She used an average amount. Do you know the distinction
3 between Dr. Wilson's use of the mean total and her use of the average
4 amount?

5 A I believe that a mean in a case that there are as many samples
6 or there would be as many numbers above it as below it.

7 Q All right. But in any event, this information was all then
8 available to the committee, was it not?

9 A Yes, that's correct.

10 Q And in reviewing it all, did you form any, or let me rephrase
11 that. You've told us before that you are not a toxicologist or a doctor,
12 you listened, I take it, to what went on in that meeting and the conclusion
13 that was reached by the toxicologists and doctors was essentially what you
14 recorded here?

15 A That's correct.

16 Q And that was the belief in Plaintiff's 1297 that this information
17 did not reasonably support the conclusion that the levels of dioxins in
18 the Tetrathal presented a substantial risk of injury to health or the
19 environment?

20 A That was the conclusion, yes.

21 Q Or does Dr. Hair's memo, Mr. Park, say unequivocally, without a
22 doubt, 250 parts per billion of dioxins in Tetrathal is unsafe and presents
23 a substantial risk of injury to the health and the environment under Section
24 8(e)?

1 A No, she does not.

2 Q She says she doesn't know, doesn't she?

3 A That's right.

4 Q Because she doesn't have this other data?

5 A That's right.

6 Q And apparently that was supplied to the satisfaction of the other
7 members of the committee that when that other data was available that there
8 wasn't a problem?

9 A That's right.

10 Q Now, do you know whether Dr. Nair was made aware of the results
11 of the 8(c) committee consideration of her report?

12 A I don't know for a certainty or personally, but I assume that
13 she was because that is the practice.

14 Q Do you know, I take it you wouldn't know one way or the other
15 whether she took issue with that and reported it to the EPA herself?

16 A I don't know.

17 Q Now, the May 11, May 22 study or meeting on 2,4-DI involving the
18 2,4,6-Trichlorophenol, if you recall, we talked about that a little bit
19 earlier, that's Plaintiff's 1275?

20 A Yes.

21 Q At one point in that regard that Mr. Carr mentioned to you, you
22 have Plaintiff's 1288 up there, I'm sorry, not 1288 but it's 1243. I've got
23 it right here, let me hand you Plaintiff's Exhibit 1243, sir, and have that
24 out there along with Plaintiff's 1275. 1243 is--you haven't found 1275?

1 A I think it's here, yes, I have it.

2 Q 1275 is the memorandum, is that an April, sir, I don't have a
3 copy in front of me, but--

4 A 1275?

5 Q I'm sorry, I meant 1243.

6 A 1243 is dated April 10, 1979.

7 Q And this is the memorandum where Dr. Wilson is discussing levels
8 of dioxin that had been found in 2,4-Dichlorophenol?

9 A Heading is in chlorophenol, but I assume that's right, yes.

10 Q Okay. Let me just get that out. Now, I believe Mr. Carr, when
11 he was asking you about this memorandum made reference to hazardous levels
12 of dioxin in the 93 percent Dichlorophenol. Now, does Dr. Wilson's memo
13 use the word level in connection with the word hazardous when he talks
14 about contents of 93 percent DCP?

15 A I do see a place where he says not chronically hazardous.

16 Q Well, the first paragraph there.

17 A Oh, okay.

18 Q There is one, he says, "One lot of 93% DCP may contain hazardous
19 chlorodibenzodioxins and dibenzofurans"?

20 A Yes.

21 Q The word level is not used there?

22 A No, it is not.

23 Q Now, this memorandum did go to Dr. Callis, did it not?

24 A Yes, he was one of the copyees on the memo.

1 Q And presumably he got it shortly after April 10, 1979?

2 A Yes.

3 Q Before the meeting on 2,4-Dichlorophenol on June 6, 1979,
4 Plaintiff's Exhibit 1275?

5 A Actually, the meetings were May 11 and May 22.

6 Q Right. And in fact Dr. Callis was a participant in that 8(e)
7 meeting in June of '79 when you considered 2,4-Dichlorophenol with regard
8 to the 2,4,6-Trichlorophenol content?

9 A That's right. The two meetings in May.

10 Q And if he had any concern about the level of dioxins reported in
11 Dr. Wilson's memorandum, certainly he could have brought it up even at that
12 meeting, couldn't he?

13 A That's correct.

14 Q Now, when you consider one of these chemicals or a mixture, sir,
15 at one of these 8(e) meetings, and you are determining whether you have any
16 information that reasonably supports the conclusion that there is a substantial
17 risk of health or of injury, as an example, in the 2,4-Dichlorophenol, when
18 you have a finding of nine and a half or ten parts per billion, I think
19 you have told us earlier that you look at the level, at the whole chemical,
20 and the various levels of the chemical; is that right?

21 A Yes.

22 Q And whether there is any evidence that that level, is there any
23 information that that level presents this kind of risk, the policy talks
24 about; is that right?

1 A That's right.

2 Q And in so doing, sir, do you make any assumptions with regard
3 to exposure of people to that level?

4 A That would be discussed, yes.

5 Q Well, is exposure to this ten parts per billion at that level,
6 is that assumed or is that not assumed, or just how do you look at exposure
7 when you are looking at a particular level in a product to see if there
8 was information or you have information?

9 A As I recall, chlorophenol itself is a toxic material. And so the
10 exposure to the chlorophenol is a concern, as well as exposure to anything
11 else that may be part of it. As I recall, any toxicity that could present
12 a substantial risk of injury would be considered by the toxicologist.

13 Q At the levels involved?

14 A Yes, that's correct.

15 Q Now, Mr. Park, Mr. Carr asked you about Plaintiff's Exhibit 1300.
16 Do you have that, sir? That's a memo of Dr. Wilson to the file regarding a
17 telephone conversation with Mr. C.T. Harwell and Diamond Shamrock dated
18 September 17, 1981. Do you have 1300 in front of you now, sir?

19 A Yes, I do.

20 Q And Mr. Carr pointed out to you therein a reference, I believe
21 it's in Paragraph 2 where it says that Canada will require a 1 ppb limit
22 on all chlorodibenzodioxins and 2,4-D sold there after 1982?

23 A Yes, I see that.

24 (Defendant's Exhibit 885 was marked for identification.)

1 Q Handing you now what's been marked as Defendant's 885. Can you
2 identify that as a letter from Dr. Wilson to this same gentleman, it would
3 appear, Mr. C---or Conrad Harwell?

4 A Yes.

5 Q And this is dated January 18, 1982, some what, three or four
6 months later?

7 A That's correct.

8 Q And do you know, sir, whether this requirement that Mr.--or Dr.
9 Wilson referred to in September, the exhibit that Mr. Carr introduced, whether
10 that was changed or not or whether that was a requirement that in fact had
11 been put into operation or was only suspected to be put in operation by the
12 Canadian government?

13 A I don't know anything about it, whether there was speculation or
14 what.

15 Q But in any event in the January 18, 1982 letter of Mr. Wilson to
16 Mr. Harwell, at Diamond Shamrock, in the third paragraph, does he reference
17 this Canadian government requirement?

18 A Yes, he does.

19 Q Would you read that to us, please?

20 A It says, "Based on 1980-1981 experience with 93 percent 2,4-Dichloro-
21 phenol production, we can provisionally guarantee that the maximum concentration
22 of any chlorodibenzodioxin compound will be 0.01 parts per million in
23 accordance with Canadian government requirements."

24 Q 0.01 parts per million, is that the same as 10 parts per billion?

1 A That's correct.

2 Q And for any chlorodibenzodioxin compound, would mean for any isomer
3 of dioxin?

4 A I would assume so.

5 Q And there are 75 isomers of dioxin, or do you know that, sir?

6 A I'm not that familiar.

7 Q Well, if there were 75 isomers of dioxin, then that would be a
8 limit of total dioxins, maximum anyway, of 750 parts per billion, wouldn't
9 it, as long as they were spread out at no more than 10 per isomer?

10 A That's correct.

11 Q Now, if the Canadian government, you do understand at least, sir,
12 that there are some isomers of dioxin that have no, that the people say have
13 very little toxicity, you understand that?

14 A I have been told that, yes, sir.

15 Q And some of those are even the tetra isomers?

16 A I've heard that, yes.

17 Q And you know why the Canadian government would then permit, if in
18 fact this is what Canada was doing, why they would permit 10 parts per
19 billion of 1, 3, 6, 8, but no more, and assume that 1, 3, 6, 8 is a very
20 nontoxic dioxin, and yet--

21 MR. CARR: Your Honor, unless this witness knows that the word
22 compound is equivalent to isomer, has the Court seen this exhibit?

23 THE COURT: I have a copy of it.

24 MR. CARR: Well, I object to it. It's clearly not the meaning

1 of the document. It says the maximum concentration of any chlorodibenzo
2 compound. Compound means all, counsel.

3 MR. MUSGRAVE: Well, then, Mr. Carr, let's look at the letter
4 from Diamond Shamrock. I want you to mark this--

5 MR. CARR: Counsel, I'm referring to this one. It says compound.

6 MR. MUSGRAVE: Well, if you want clarification, Diamond Shamrock--
7 well, mark this one.

8 MR. CARR: What Diamond Shamrock means, this is Monsanto, are you
9 bringing in somebody from Diamond Shamrock to testify?

10 MR. MUSGRAVE: That's a letter from Monsanto to Shamrock.

11 THE COURT: Gentlemen, could you approach the bench and bring
12 that up?

13 (The following proceedings were held at the bench.)

14 THE COURT: Okay, go ahead.

15 MR. CARR: Your Honor, I would object to the use of this document.
16 It is not--the person here isn't here to explain the meaning of it. It's
17 clearly hearsay. It is not my understanding of it. They describe here
18 five parts per billion for the monochlorodioxin isomer. That is not an
19 isomer, that is one of ten--

20 MR. MUSGRAVE: Two.

21 MR. CARR: There are eight monochloro. Monochloro does not
22 describe an isomer. Isomer is described by 1, 2, 3, 6, 8 or 3, 4, 5, 7.
23 Monochloro means Cl_1 , is what it means. And Dichloro is Cl_2 . And the person
24 that's using this, using raw materials, is a raw materials buyer. He is not

1 here. I can't cross examine him to point out what this document means,
2 and this is strictly hearsay, and I would object to the use of this document
3 with this witness without the author of it here being subject to cross
4 examination.

5 MR. MURGRAVE: Your Honor, Mr. Carr has been permitted throughout
6 the course of this trial to introduce documents and evidence over objection
7 and have witnesses that neither authored them nor have seen them before
8 testifying as to what they contain. I cite to the Court the most recent
9 example of the letter received from the Department of Health, Education, and
10 Welfare received by Monsanto employee attaching an analysis that I objected
11 to with this Court. It seems to me that the position of this Court is that
12 these documents are available for use to examine the witnesses with, and
13 Mr. Carr has put at issue by his introduction of another exhibit what the
14 Canadian government level was, and we are bringing this in to further
15 clarify what Monsanto's understanding of it was. It was an improper
16 element to be admitted at the beginning. The Court has permitted it to come
17 in without substantiation as to what the requirement was, because it was
18 hearsay without the requirement, without someone to say what it was. Now
19 I'm bringing in this to further clarify it.

20 MR. CARR: This is an entirely different situation and counsel
21 knows it. Parts of their record that I want to use appropriately to
22 impeach this witness on a particular thing, he used that because he, this
23 witness pointed out it was a document that was sent by Monsanto. It was
24 dealing with the dioxin content of a 2,4-Dichlorophenol product. It is an

1 entirely different situation, that exception to the hearsay rule is an
2 entirely different situation than what he is asking for. He is saying in
3 effect since there are exceptions to the hearsay rule, the hearsay rule is
4 destroyed and therefore this Court should allow any hearsay into evidence
5 no matter what it might be. This document they are now seeking to put into
6 evidence does not meet any of the exceptions to the hearsay rule of which
7 I am aware.

8 MR. MUSGRAVE: I refer specifically to Plaintiff's Exhibit 1300
9 where counsel was permitted to cross examine with regard to Canada's
10 requirement, and I am entitled to clarify that. It's hearsay in that
11 document, it's what Canada's requirement is, and it was permitted over
12 objection and I am certainly entitled to go into it to clarify it with
13 what would be at the very least considered to clarify its admissibility.

14 MR. GARR: I don't object to you trying to clarify it, but not
15 with a hearsay document. I do not object to you using Jim Wilson's
16 document, Monsanto Exhibit 885, which describes it as one part per million
17 of any chlorodibenzodioxin compound, and that's the Monsanto's description
18 of it. You are not trying to go beyond that. I could have objected to the
19 Monsanto exhibit, but I didn't, the Wilson exhibit, counsel has objected to
20 similarly in the past. But I didn't, but I do object to a document by
21 somebody that is a materials buyer who is not here to be cross examined as
22 to what he means when he says monochlorodioxin isomer. There is no such
23 isomer as a monochlorodioxin isomer. The document certainly can't speak
24 for itself, and I certainly would want to be able to cross examine on that

1 point.

2 MR. MUSGRAVE: May we at least mark this so the record can
3 reflect--

4 THE COURT: I'm going to sustain the objection to it. I think
5 you are right as far as hearsay.

6 (Defendant's Exhibit 886 was marked for identification.)

7 MR. MUSGRAVE: Your Honor, may the record reflect that the exhibit
8 we have just been talking about has been marked as Defendant's Exhibit 886?

9 THE COURT: Thank you.

10 (The following proceedings were held in open Court.)

11 BY MR. MUSGRAVE:

12 Q Mr. Park, do you have Plaintiff's Exhibit 1295 there, the
13 memorandum that you wrote to Dr. Paget in June of 1979?

14 A I don't believe so.

15 Q Well, the clerk has gotten it for us. Let me hand that to you.

16 MR. CARR: What's the exhibit number, counsel?

17 MR. MUSGRAVE: Plaintiff's 1295.

18 Q And sir, now, this memorandum of yours dated June 11, 1979
19 references a memo from G.E.P. That's Dr. Paget, is it?

20 A That's correct.

21 Q Dated June 11, '79?

22 A Yes.

23 (Defendant's Exhibit 887 was marked for identification.)

24 Q Mr. Park, let me hand you what's now been marked as Defendant's

1 887. Is that the memorandum of June 11, '79 of Dr. Paget that your
2 memorandum of the same date, Plaintiff's Exhibit 1295, references?

3 A Yes.

4 Q What is the subject matter of Dr. Paget's June 11 memorandum
5 that you are responding to on June 11?

6 A Attached to Dr. Paget's June 11th, 1979 memorandum was what I
7 would take to be his draft of a proposed position statement, I guess,
8 relating to dioxin, and he circulated to the number of people, including me,
9 and asked for our comment on it.

10 Q Okay. And is that proposed position paper attached to, yeah,
11 there it is attached.

12 A It is, um, here.

13 Q And do you recall just generally the contents of what he was
14 suggesting, or would you care to take a minute to read that so that you
15 can become familiar with it with reference to what your response was?

16 A Let me take one minute.

17 THE COURT: If this is a good point, why don't we take a real
18 short break?

19 MR. MUSGRAVE: It will be fine, your Honor.

20 THE COURT: We will take a short break at this time, very short,
21 and the admonishments that I have given you earlier will apply during this
22 break also. The Court is in recess.

23 (At this time Court was in recess.)

24 BY MR. MUSGRAVE:

1 Q Now, Mr. Park, you have had an opportunity to review Defendant's
2 Exhibit 887, which is the June 11, 1979 memo of Dr. Paget which you
3 responded to on June 11?

4 A Yes.

5 Q Now, what was the general thrust, if you will, of the nature of
6 Dr. Paget's memo of June 11 that you responded to?

7 A It contained a number of proposals concerning possible internal
8 efforts relating to dioxin.

9 Q And specifically, with regard to detection levels, was there
10 anything stated in there?

11 A Detection levels?

12 Q Yes.

13 A He does, he does speak of, oh, yes, sorry, detection levels, there
14 is a paragraph in here, it says "analytical position".

15 Q All right, sir.

16 A It speaks a bit, quite a bit, about some people claim to be
17 finding specific tetrachlorodibenzodioxin isomers at levels of parts per
18 trillion, and that this may well be incorrect and goes on to say that
19 Monsanto should continue to refine its analytical techniques, all present
20 agreed that it was sound policy that Monsanto should, I can't read it very
21 well here, should improve its something, skill in this area.

22 Q So Dr. Paget is essentially stating that the position should be one
23 of continuing to refine and improve detection limits and analytical skills?

24 A And as I read it, to go way down to such that concentrations of

1 dioxin could be found at and below the part per trillion level.

2 Q And that memo was then circulated to people for comment?

3 A That's correct.

4 Q And you were one of those that got it?

5 A That's correct.

6 Q And Plaintiff's Exhibit 1295 were the comments that you made?

7 A That's right.

8 Q And therein, and of course this is a document that Mr. Carr
9 examined you about, but only with reference to the last part of it; Isn't
10 that correct, the one sentence at the bottom of the page there?

11 A Yes.

12 Q Well, let's look at the entire document if we can, Mr. Park.
13 First of all, in responding to Dr. Paget's position with regard to getting
14 the levels of detection down low in the area where you were talking about,
15 what was your response to that as set out in this exhibit, Plaintiff's
16 1295?

17 A In here, I responded and in so many words said that I felt that
18 Monsanto should refine its analytical techniques so as to be able to
19 detect dioxin down to a level considered by our medical people to be non-
20 hazardous, but once we could detect it at a level where we felt it
21 presented no hazard, then I advised against further refining of the analytical
22 techniques.

23 Q All right. As a matter of fact, you say in the introductory
24 paragraph on this as follows, do you not, "As mentioned at the meeting, I

1 am concerned that Monsanto not over react as a result of the news media
2 infatuation with dioxin. It is a contaminant in some products and in some
3 instances is highly toxic, but this does not mean that an all-out effort
4 should be made to detect extremely low levels of dioxin in a product after
5 it has been determined that any dioxin present is less than the highest
6 nonhazardous level," is that correct?

7 A Yes.

8 Q Now, you don't know what that is in any particular instance you
9 rely upon the expertise of others, do you not, though?

10 A That is right.

11 Q Then you go on and state immediately after that, "developing
12 unnecessary but inflammatory information might be contrary to the best
13 interests of Monsanto and the public." What did you mean when you said that
14 developing information which I take it you meant would be getting information
15 about dioxin present below the highest nonhazardous level that that might
16 be contrary to the best interests of Monsanto and the public, now, this
17 is your opinion?

18 A This is just my opinion.

19 Q And you were asked to state it, and you did?

20 A Yes.

21 Q And what did you mean by that, sir? What was your personal opinion
22 on that?

23 A What I had in mind was my understanding would be, for example,
24 that a given concentration of dioxin might be determined, let's say, if the

1 analytical techniques were refined sufficiently to be made one part per
2 quadrillion in some product, whatever, assuming that that would be a level,
3 might well be a level far below what our own medical people would say
4 would present any problem, at that level there is simply no problem that
5 can be presented here?

6 A I felt at that time, and I think it still may be the case to a
7 little degree, that a great, that some of the news media didn't understand
8 about the toxicity of dioxin, that finding any, a molecule of dioxin, would
9 be, could be inflammatory, that some reporters would not understand, maybe
10 some people in good faith would not understand, and therefore it could
11 create anxieties and concern where it was not necessary.

12 Q Including the public, in your opinion?

13 A Needless anxiety, yes, right.

14 Q And that's why you indicate or state here that the inflammatory
15 information might be contrary to the best interests of Monsanto and the
16 public?

17 A And the public, that's right.

18 Q And that's just your personal opinion?

19 A That's just my personal opinion.

20 Q Then you go on, sir, in the memorandum, and I want to direct your
21 attention to the last paragraph there on Page 1, the last sentence of
22 which Mr. Carr asked you about.

23 A Um hm.

24 Q And in the first two sentences in that paragraph, the first sentence

1 you indicate, do you not, sir, that you feel it is important for Monsanto
2 to be capable of monitoring products and work places for dioxin and any
3 other substance which might be considered hazardous down to levels of which
4 it is felt no hazard exists?

5 A Yes, I specifically state that.

6 Q And then you say, "I do not feel it is necessary to develop
7 monitoring and analytical capabilities to detect the levels of contaminants
8 at levels below the highest nonhazardous level"?

9 A Yes, um hm.

10 Q And this is the sentence that immediately follows that Mr. Carr
11 examined you about?

12 A Yes.

13 Q Where you said immediately thereafter, "I am afraid that disclosure
14 to government agencies or the public that a contaminant has been detected
15 in a product at parts per trillion or parts per quadrillion levels (far below
16 the nonhazardous level) will merely add fuel to the media fires which already
17 burn furiously." Now, was that espousing or stating that you had an opinion
18 of a policy of nondisclosure?

19 A On, absolutely not.

20 Q Doesn't this imply that you would be disclosing these things?

21 A Yes.

22 Q But your concern was, and a personal opinion, that if you were
23 detecting at levels far below what the technical people said could conceivably
24 be any risk, that because of the difficulty in maybe educating people in your

1 opinion, that all it would do is possibly be not in the public interest and,
2 as you say, would add fuel to the media fires. If the media doesn't under-
3 stand?

4 A That's right.

5 Q There was no intent of a personal policy of nondisclosure in this
6 statement at all was there, sir?

7 A In fact, I assumed that the information that would be obtained
8 at these extremely low levels would be disclosed.

9 Q Would be disclosed?

10 A That's right.

11 Q Mr. Park, Mr. Carr also asked you about Plaintiff's 1239A, which
12 was a blow-up of a memo from Dr. Wilson to Doctor--well, I take it back, it
13 was just a memorandum of Dr. Wilson with regard to a report of a comment
14 made by Dr. Paget. You remember him asking you about this?

15 A I can't remember the specific question, though.

16 Q DMEH, Dr. Paget states that one part per billion 2,3,7,8 tetra-
17 chlorodibenzodioxin is probably acceptable medically in Santophen I.

18 A Yes.

19 Q Now, who would know in your opinion better what Dr. Paget meant
20 by that in the context in which it was said? Would you know? Were you
21 present when that conversation took place?

22 A No, uh huh.

23 Q Dr. Paget or Dr. Wilson certainly know better what was said, what
24 was intended.

1 A Far better.

2 Q And particularly Dr. Paget would know what he had in mind better
3 than anyone?

4 A Yes, he would.

5 MR. MUSGRAVE: Just one moment, your Honor. No other questions
6 at this time, your Honor.

7 THE COURT: Mr. Carr?

8 RECROSS EXAMINATION

9 BY MR. CARR

10 Q Mr. Park, if I understand you correctly, what you meant in the
11 memo that you wrote with regard to Dr. Paget's position paper was that if
12 one part per billion of 2,3,7,8 TCDD in Santophen is an acceptable level
13 and it is not hazardous, that you believe Monsanto should not get the
14 ability to go down and detect less than one part per billion in the
15 Santophen; is that correct, sir?

16 A I was really thinking of one part per trillion.

17 Q Excuse me. Could you answer that question, please, sir, as I
18 posed it to you?

19 A No, that's not correct, Mr. Carr.

20 Q Then you believe that Monsanto then should have the capacity
21 to go and detect the presence of dioxin in its product down below what's
22 considered a nonhazardous level; is that correct, sir?

23 A I'm sorry, as I state in my memo--

24 Q Excuse me, could you answer that question, please, sir, because

1 you told us what you meant by that memo without referring to it when
2 Mr. Husgrave was asking you, and I am not now asking you what you said in
3 that memo, I'm asking you what you meant when you said this a moment ago.
4 Are you saying that if one part per billion of 2,3,7,8 TCDD is a non-
5 hazardous level, that Monsanto need not get the ability, analytical ability
6 to go and detect levels below one part per billion in Santophen?

7 A That is correct.

8 THE COURT: I'm sorry, I didn't hear your answer.

9 A That is correct.

10 THE COURT: Thank you.

11 Q And what you're saying, then, and the reason that you say Monsanto
12 should not have the capacity to go below to detect things in Santophen
13 below one part per billion is that the public would learn that there are
14 lower levels in the product through the media one way or another. It is
15 not in the best interests of the public, I think is the way you phrased it,
16 did you not, sir? Isn't that the way you phrased it?

17 A Best interests of Monsanto or the public.

18 Q Monsanto or the public, you equated the two, Monsanto's interests
19 and the public interests coincide in your judgment; is that correct?

20 A Yes.

21 Q Now, what you are saying is the public then should not be told
22 the facts about Monsanto's products, because in your judgment this knowledge
23 would hurt the public for them to know the facts, isn't that what you are
24 really saying, Mr. Park?

1 A No, that's not it, Mr. Carr. I'm saying I don't think we need
2 to go to the effort to further define analytical techniques to detect
3 the dioxin down below a nonhazardous level.

4 Q The only--what you say is, I am afraid that disclosure to govern-
5 mental agencies and not just the public, "that disclosure to governmental
6 agencies or the public that a contaminant has been detected will merely
7 add fuel to media fires which already burn furiously," and what you are
8 saying there--

9 MR. MUSGRAVE: Mr. Carr, you are reading, that's at those levels,
10 Mr. Carr, that's an important part of that sentence.

11 Q Well, it says at parts per trillion or parts per quadrillion
12 levels far below the nonhazardous level will merely add fuel to the media
13 fires which already burn furiously, that is what you are saying, sir?

14 A Yes.

15 Q That you don't think that you should disclose that Monsanto, first
16 of all, shouldn't learn anything about its product below what Monsanto
17 considers to be medically acceptable levels because if it does learn, it's
18 going to have to disclose it to the governmental agencies and to the public?

19 A And it's a use of resources that could be used better somewhere
20 else, perhaps.

21 Q Well, now, Mr. Park, that may be, but what you are saying here,
22 clearly, is what you are saying is if you find these things out you are
23 going to have to tell the government, a governmental agency, aren't you, sir?

24 A Could well, yes.

1 Q And what you are saying is that Monsanto doesn't trust the
2 governmental agencies with this knowledge, aren't you, sir?

3 A No, no.

4 Q Then why not disclose it to the governmental agencies, sir?

5 A I am not saying anything about not disclosing, I am talking
6 about analytical techniques only.

7 Q You are not talking about disclosing what you learn in your
8 analytical technique to the government, did I read that correctly, "I am
9 afraid that disclosure to governmental agencies or the public will merely
10 add fuel to the media fires." Didn't you say that?

11 A Yes, I am assuming what we find would be disclosed.

12 Q And what you are saying is that you do not trust the governmental
13 agencies to act responsibly on this information that Monsanto might detect
14 and tell it as to these parts per quadrillion or parts per trillion, aren't
15 you, sir?

16 A No, I am not saying that.

17 Q Then what other reason could you have for not disclosing? I
18 can understand Monsanto's not trusting the public, although I certainly
19 don't agree with Monsanto's not trusting the public having the right to know,
20 I can understand why Monsanto could perhaps take that position publicly--

21 MR. MUSGRAVE: Just a moment, Mr. Carr. I object to counsel's
22 statement. It is not a question, your Honor, it is a speech and it's
23 improper and I request that the Court strike it and instruct the jury to
24 disregard it with regard to his understanding of what Monsanto not trusting

1 the public, that's totally improper.

2 THE COURT: Overruled.

3 Q Mr. Park, do you believe that the public has the right to know
4 whether or not Santophen has in it dioxin at any level? Do you believe the
5 public has the right to know that at whatever level it might be that they
6 are going to put this in the nursery, in a baby's crib? They recommend on
7 it that you use it in the nursery and wash the baby's toys with it. Don't
8 you think that the public has the right to know whatever the level might
9 be in the product? One part per quadrillion billion trillion, as low as
10 you can possibly detect it, don't you think they have the right to know
11 that, Mr. Park?

12 A I don't see the purpose that would be served by--

13 Q I'm not asking you about purpose. I'm asking you whether or not
14 you believe the public has the right to know what they are using with their
15 children in the nursery.

16 A To the extent that information is available.

17 Q Then they do have the right to know, don't they, sir?

18 A To the extent that information about it is available.

19 Q And what you are saying is since they have the right to know,
20 Monsanto should not learn about quadrillion or parts per trillion contamination
21 because if you learn about it, you are going to have to tell about it. Now,
22 that's what you are saying, isn't it, Mr. Park?

23 A Once one goes down below--

24 Q Isn't that what you are saying, Mr. Park?

1 A It was my recommendation---

2 Q Isn't that what you are saying, Mr. Park?

3 A I don't think it's quite that, no, Mr. Carr.

4 Q Then would you explain what you are saying, Mr. Park, if you are
5 not saying, "Hey, let's not find out what our product has in it, because
6 if we find out, we're going to have to disclose it to the governmental
7 agencies and to the public and we don't want to do that. It is not in the
8 best interests of Monsanto to disclose that"? Would you explain what you
9 do mean by that, Mr. Park?

10 A My suggestion which was not adopted was that once we can detect
11 dioxin at a level which is considered, not just by Monsanto but by anyone,
12 to be nonhazardous, then nothing is served by further refining analytical
13 techniques to go below that. Now, that was really all I was recommending.

14 Q Now, I ask you what you meant by this statement, Mr. Park. I
15 asked you what you meant when you said, "I am afraid that disclosure," when
16 you said, "I do not feel it is necessary to develop monitoring and analytical
17 capabilities to detect the presence of contaminants at levels below the
18 highest nonhazardous level. I am afraid that disclosure to governmental
19 agencies or the public that a contaminant has been detected in a product
20 at parts per trillion or parts per quadrillion, levels far below the
21 nonhazardous level will merely add fuel to the media fires which already
22 burn furiously." I'm asking you to explain to us what you mean by that
23 statement, Mr. Park.

24 A I think there have been, this is personal opinion, I think there

1 have been a number of instances of media misunderstanding about dioxin
2 toxicity, and I think this has worked to the disadvantage of a number of
3 people who have been given undue anxieties, unnecessary anxieties about
4 their own health as a result of possible or potential exposure to extremely
5 low levels, not just of dioxin, but to anything.

6 Q Now, Mr. Park, have you seen any campaign by Monsanto or anyone
7 else to explain to the public that parts per quadrillion is not going to
8 hurt you? Have you seen anything like that go on?

9 A No.

10 Q Have you seen any irresponsible press anywhere where they are
11 saying that something other than that the EPA has said? Have you seen any
12 demagogue stand up and say, "Hey, these things that you are talking about--"

13 A Yes, I think this has taken place at different places around the
14 country, what I am describing here.

15 Q That somebody has said ill effects that they don't believe is a
16 fact and that scientists have said things that they don't believe are a
17 fact, have you seen that?

18 A I am talking about the news media.

19 Q That happens to be the St. Louis Post-Dispatch and the Belleville
20 News Democrat and the TV stations. Have you seen these media here locally
21 take irresponsible positions with regard to dioxin contamination?

22 A I think at Love Canal there were some instances of this which
23 were pointed out.

24 Q Could you direct your attention to the question that I asked you?

1 Have you seen instances where the Post-Dispatch or the Globe Democrat or
2 the News Democrat or the TV stations have taken irresponsible positions
3 with regard to what they are telling the public about dioxin contamination
4 in Missouri and elsewhere?

5 A I believe, I can't recall it with great clarity, but I believe
6 the Post-Dispatch at one time put in an article that we felt was, in fact,
7 a lengthy article--

8 Q Well, now, that article was actually a reprint of what NIOSH
9 said, wasn't it, sir?

10 A I don't remember that.

11 Q Don't you remember what it was, sir, and that Monsanto took a
12 position contrarywise on that? This was something that a governmental
13 agency said that they found in St. Louis in a truck yard. Don't you
14 recall that, Mr. Park?

15 A I'm thinking of something different from that, Mr. Carr.

16 Q Well, what are you thinking of other than that, sir?

17 A I can't, like I say, recall with great clarity, but as I recall,
18 there was like a Sunday supplement insertion in the Post-Dispatch.

19 Q Oh, that dealt with dioxin, there was a long section that dealt
20 with dioxin and you believe that the Post-Dispatch distorted facts in that
21 Sunday supplement?

22 A I can't recall exactly right now.

23 Q Now, Mr. Carr, as a matter of fact, you know that the Post-
24 Dispatch has reported responsibly, you know that there has been no demagoguery

1 on this, and what you are saying then is that you, and you wanted Monsanto
2 to adopt your position, and it's my thesis that they have done so, and I
3 think the evidence shows it. You said in effect, "Don't let the public
4 know--"

5 MR. MUSGRAVE: Object, your honor.

6 Q That's what you said.

7 MR. MUSGRAVE: Counsel's characterization of his belief and
8 what the evidence shows, that's argument, that's a speech, it is improper,
9 I request that the Court instruct the jury to disregard it and strike it
10 from the record.

11 THE COURT: Overruled. Would you answer the question, please,
12 and then we are going to have to break for the day.

13 A No, that isn't what I said.

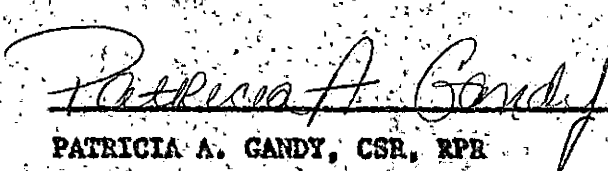
14 THE COURT: Ladies and gentlemen, we are going to end the testimony
15 for today. We will resume again tomorrow morning at 9:30. The regular
16 admonishments that I give you on any overnight breaks will apply during
17 this one also. The Court is in adjournment until 9:30.

18 (Court adjourned for the day.)
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I, Patricia A. Gandy, CSR, RPR, Official Court Reporter in and
for the Twentieth Judicial Circuit, and the Official Court Reporter who
transcribed the above-styled cause had on April 16, 1985, do hereby
certify that the foregoing transcript of proceedings is a true, correct
and complete transcript of the proceedings had on said date.

DATED this 23rd day of April, 1985.

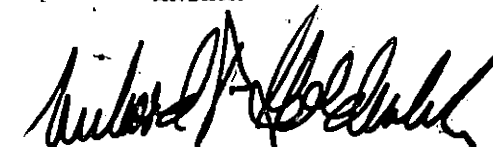

PATRICIA A. GANDY, CSR, RPR
Official Court Reporter

1 STATE OF ILLINOIS)
2) SS.
3 COUNTY OF ST. CLAIR)
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5

6 I, RICHARD P. GOLDENHERSH, Circuit Judge in and for the
7 Twentieth Judicial Circuit, hereby certify that the above is a true and
8 correct transcript of the proceedings had in the case captioned: FRANCES
9 E. KEMNER, et al., v. MONSANTO COMPANY, Cause No. 80-L-970, heard on
10 April 16, 1985.

11 DATED this 24th day of April, 1985.
12

13 ENTER:

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16 RICHARD P. GOLDENHERSH, Circuit Judge
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